

SAN FRANCISCO PUBLIC LIBRARY



3 1223 08514 3817

5/S



San Francisco Public Library

Government Information Center
San Francisco Public Library
100 Larkin Street, 5th Floor
San Francisco, CA 94102

REFERENCE BOOK

Not to be taken from the Library



Digitized by the Internet Archive
in 2016

TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND



**TREASURE ISLAND DEVELOPMENT AUTHORITY
MEETING AGENDA**

May 14, 2008 - 1:30 P.M.

Room 400, City Hall
1 Dr. Carlton B. Goodlett Place

Gavin Newsom, Mayor

DIRECTORS

Claudine Cheng, *President*

Fred Blackwell

Jared Blumenfeld

Supervisor Chris Daly (*Ex-Officio*)

John Elberling, *C.F.O.*

Matthew Franklin

John Rahaim

Owen Stephens, *Secretary*

Mirian Saez, Director of Island Operations

Peter Summerville, Commission Secretary

ORDER OF BUSINESS

1. Call to Order and Roll Call
2. Report by Director of Island Operations (*Discussion Item*)
Length of Item: 5 minutes
3. Report by Office of Joint Development (*Discussion Item*)
Length of Item: 10 minutes
4. Communications (*Discussion Item*)
Length of Item: 5 minutes
5. Report by the Treasure Island/Yerba Buena Island Citizen's Advisory Board (*Discussion Item*)
Length of Item: 5 minutes

DOCUMENTS DEPT.

MAY 12 2008

SAN FRANCISCO
PUBLIC LIBRARY

6. Ongoing Business by Directors (*Discussion Item*)
Length of Item: 5 minutes
7. General Public Comment (*Discussion Item*) ****In addition to General Public Comment (Item #7), Public Comment will be held during each item on the agenda. ****
Length of Item: 10 minutes
8. **CONSENT AGENDA**
Length of Item: 5 minutes

All matters listed hereunder constitute a Consent Agenda, are considered to be routine by the Treasure Island Development Authority Board and will be acted upon by a single vote of the Authority Board. There will be no separate discussion of these items unless a member of the Authority Board so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.

- a.) Approving the Minutes of the March 12, 2008 Special Meeting and the April 9, 2008 Regular Meeting (*Action Item*)
 - b.) Resolution Authorizing an Amendment to the Contract with Geomatrix Consultants, Inc. to Extend the Term Through June 30, 2009 and Increase the Contract by an Amount of \$180,000 for a Not to Exceed Amount of \$1,439,000 for Environmental Consulting Services (*Action Item*)
 - c.) Resolution Approving and Authorizing the Director of Island Operations to Retroactively Execute a Use Permit with The O'Brien's Group, Inc., a California Corporation for the Use of Quarters 62 (*Action Item*)
 - d.) Resolution Retroactively Approving the Fee Increase of the Banner Space above the Yerba Buena Island Tunnel Effective January 1, 2008 from \$7,500 to \$10,000 per Month (*Action Item*)
- 9.) Resolution Approving the Budget of the Treasure Island Development Authority for Fiscal Year 2008-2009, Budget and Authorization to Enter into Work-Orders for Services with other City Departments for Operations, and Authorizing the Director of Island Operations to Submit the Proposed Budget to the Mayor of the City and County of San Francisco for Further Review and Inclusion in the City's 2008-2009 Budget (*Action Item*)
Presented by: Mirian Saez, Director of Island Operations
Length of Item: 10 minutes
 - 10.) Informational Presentation on Anticipated Capital Expenditures for the Treasure and Yerba Buena Islands Housing Units (*Discussion Item*)
Presented by: Ned York, The John Stewart Company
Length of Presentation: 10 minutes

- 11.) Resolution Authorizing the Demolition and Removal of Building 227, Also Known as The Fogwatch, Located on Treasure Island (*Action Item*)
Presented by: Richard Rovetti, Leasing Manager
Length of Item: 10 minutes
- 12.) Resolution Authorizing the First Amendment to the Sublease between the Treasure Island Development Authority and California Logistics, a California Limited Liability Corporation to Retroactively Decrease the Square Footage of the Premises, Waive Penalties and Delinquency Charges and Extend the Term on a Month-to-Month Basis Through and No Later Than June 30, 2008 (*Action Item*)
Presented by: Marc McDonald, Facilities Manager
Length of Item: 5 minutes
- 13.) Resolution Establishing an Ad-Hoc Nominating Committee, Consisting of Three Members of the Treasure Island Development Authority ("TIDA") Board of Directors Appointed by the President, to Nominate Members of the TIDA Board to Serve as Officers of the TIDA Board in Accordance with the TIDA Bylaws (*Action Item*)
Length of Item: 5 minutes
- 14.) Discussion of Future Agenda Items by Directors (*Discussion Item*)
- 15.) POSSIBLE CLOSED SESSION
If approved by the TIDA Board, this Closed Session item will take place for approximately 30 minutes at the end of the meeting
- a. Public Comment on all items relating to closed session
 - b. Vote on whether to hold closed session to confer with real property negotiators. (*Action item*)
 - c. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Persons negotiating for the Authority: Jack Sylvan, Michael Tymoff
Persons negotiating with the Authority: United States Navy, Treasure Island Community Development LLC,
Property: Former Naval Station Treasure Island
Under Negotiation:
Price: _____ Terms of payment: _____ Both: X
 - d. Reconvene in open session (*Action item*)
 - i. Possible report on action taken in closed session under Agenda Item 15(Government Code section 54957.1 (a) (1) and San Francisco Administrative Code Section 67.12)
 - ii. Vote to elect whether to disclose any or all discussions held in closed session (*San Francisco Administrative Code Section 67.12*).
- 16.) Adjourn

Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Development Authority Office, 410 Avenue of the Palms, Building 1, Treasure Island, and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.

Disability Access

The Treasure Island Development Authority holds its regular meetings at San Francisco City Hall. City Hall is accessible to persons using wheelchairs and others with disabilities. Assistive listening devices are available upon request. Agendas are available in large print. Materials in alternative formats and/or American Sign Language interpreters will be made available upon request. Please make your request for alternative format or other accommodations to the Mayor's Office on Disability 554-6789 (V), 554 6799 (TTY) at least 72 hours prior to the meeting to help ensure availability.

The nearest accessible BART station is Civic Center Plaza at the intersection of Market, Grove, and Hyde Streets. The accessible MUNI Metro lines are the J, K, L, M, and N (Civic Center Station or Van Ness Avenue Station). MUNI bus lines serving the area are the 47 Van Ness, 9 San Bruno, and the 6, 7, 71 Haight/ Noriega. Accessible curbside parking is available on 1 Dr. Carlton B. Goodlett Place and Grove Street. For more information about MUNI accessible services, call 923-6142.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based scented products. Please help the City to accommodate these individuals.

The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact: Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the SOTF or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

TREASURE ISLAND DEVELOPMENT AUTHORITY
410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND



MIRIAN SAEZ
DIRECTOR OF ISLAND OPERATIONS

Memorandum

TO: Treasure Island Development Authority, Board of Directors

FROM: Mirian Saez, Director of Island Operations

RE: Site 12 update:

DATE: May 9, 2008

Portions of The Treasure Island residential community were developed on top of a former disposal site known as Site 12.

As part of the ongoing remediation program on Treasure Island, the Navy is removing soil from Site 12 that might be contaminated with hazardous materials, such as lead and residual oils.

The initial removal process called for removing up to 4 feet of soil over a large part of the Northern perimeter of the island, including some sites immediately adjacent to Buildings 1211, 1213, 1235, 1237 and 1325.

In an effort to facilitate the removal project, residents adjacent to the remediation sites were relocated.

The initial removal process was scheduled for completion in October of 2007. The project is now expected to be complete in June of 2008.

Post removal inspections revealed the presence of small buttons that contain radium, a radioactive material. Luminescent radium was painted on the buttons which were probably used as markers on military apparel to help personnel identify each other in the dark.

The Navy's is now conducting surveys to determine whether a new removal program will be needed to locate and remove the buttons.

While the discovery has not identified materials in a large enough concentration to be harmful to people or their pets, pending completion of this survey and possible removal program the Navy has stated that re-occupancy of Buildings 1211, 1213, 1235, 1237 and 1325 will be delayed to an indeterminate date.

Treasure Island Development Authority
Subleases Executed Pursuant to
Leasing Policy

Tenant Name Building No. Address	Commencement Date	Use	Monthly Rent	Square Feet	Type	Monthly Rate psf	Allowance	Rent Credits	Comments
SEPD Behavioral Sciences I David Giguere & Sherr Lynn Wood Building 1- Suite 306	March 1, 2008	Office	\$ 853.00	3,552	office	\$0.24	None	None	Subtenant to receive 14 days of early entry to clean facility.
Glide Foundation Building 11 School	April 25, 2008	Office/Storage	\$ 1,004.70	PA-655; PB-428	office	\$0.90	None	None	Subtenant to receive 14 days of early entry to clean facility.
EPA Building 140 Nimitz Conference Center SF PORT CASA Office of Joint Development Admiral House	April 11, 2008	classroom	\$ 5,000.00	19,575	School	\$0.20	None	None	special event
	5/5/2008 to 5/9/2008	Meeting Room	\$2,000.00	na	office	NA	None	None	special event
	May 22, 2008	Meeting Room	waived	na	office	NA	None	None	special event
	April 28, 2008	Meeting Room	waived	na	office	NA	None	None	
"The Director of Island Operations shall present a written description at each monthly meeting of the Authority describing all leasing activity, including leases and renewals signed by the Director and the terms of those subleases and renewals."									
Section III. B REVIEW AND REPORTING REQUIREMENTS									
TREASURE ISLAND DEVELOPMENT AUTHORITY INTERIM SUBLEASING POLICY									

DATE	TYPE	LOCATION	EVENT	START	END	GUESTS
01 May 08	Interviews	Upstairs Conf. Room	WVC/TIDHI	2PM	4PM	12
02 May 08	Rehearsal	Chapel	Maureen Kell/Mark Middleton	1030AM	1130AM	140
02 May 08	Wedding	Casa de la Vista	Barbara Llewellyn Catering & Events	1PM	9PM	180
03 May 08	Wedding	Casa de la Vista	Suzanne Barneault/Ian Mackey	2PM	10PM	180
04 May 08	Wedding	Chapel	Maureen Kell/Mark Middleton	3PM	6PM	150
05 May 08	Wedding	Casa de la Vista	Maureen Kell/Mark Middleton	am	11PM	
06 May 08	Wedding	Casa de la Vista	Maureen Kell/Mark Middleton	am	11PM	
07 May 08	Wedding	Casa de la Vista	Maureen Kell/Mark Middleton	am	11PM	
08 May 08	Wedding	Casa de la Vista	Maureen Kell/Mark Middleton	am	11PM	
09 May 08	Anniversary	Casa de la Vista	Maureen Kell/Mark Middleton	am	11PM	
09 May 08	Rehearsal	Chapel	Sarah Payne/Jeff Hunter	3PM	4PM	
10 May 08	Wedding	Chapel	Sarah Payne/Jeff Hunter	245PM	545PM	100
10 May 08	Prom	Building 1	Innovative Events-Heritage High	4PM	1AM	350
11 May 08	Picnic	Fogwatch Picnic	Lex Bayer	4PM	12AM	400
12 May 08	Prom	Building 1	Innovative Events-Concord High	4PM	1AM	400
13 May 08	Wedding	Casa de la Vista	Genevieve Luckel/Darren Griffiths	4PM	12AM	150
14 May 08	Wedding	Casa de la Vista	Genevieve Luckel/Darren Griffiths	4PM	12AM	150
15 May 08	Wedding	Casa de la Vista	Genevieve Luckel/Darren Griffiths	4PM	12AM	150
16 May 08	Wedding	Casa de la Vista	Genevieve Luckel/Darren Griffiths	4PM	12AM	150
17 May 08	Wedding	Casa de la Vista	Genevieve Luckel/Darren Griffiths	4PM	12AM	150
18 May 08	Wedding	Chapel	Nishi Nijhawan/Darius Johnson	3:30PM	6:30PM	150
19 May 08	Wedding	Casa de la Vista	Nishi Nijhawan/Darius Johnson	1PM	1AM	
20 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
21 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
22 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
23 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
24 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
25 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
26 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
27 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
28 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
29 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
30 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50
31 May 08	Wedding	Casa de la Vista	Port of San Francisco/Linda Battaglia	630AM	6PM	50





SAN FRANCISCO PUBLIC UTILITIES COMMISSION
WATER QUALITY BUREAU

1657 ROLLINS ROAD, BURLINGAME, CA 94010 • Tel. (650) 652-3100 • Fax (650) 652-3142



November 19, 2007



GAVIN NEWSOM
MAYOR

RYAN L. BROOKS
PRESIDENT

ANN MOLLER CAEN
VICE PRESIDENT

E. DENNIS NORMANDY
RICHARD SKLAR
DAVID HOCHSCHILD

SUSAN LEAL
GENERAL MANAGER

ANDREW DeGRACA
BUREAU MANAGER

Mr. Peter Summerville
Treasure Island Facilities
410 Avenue of Palms, Building 1, 2nd Floor
San Francisco, California 94130

Re: Bottled Water Purchase Phase Out – Treasure Island Facilities
Water Quality Inspection and Sampling Results

Dear Mr. Summerville:

The San Francisco Public Utilities Commission (SFPUC) supplies its customers with water that meets or exceeds all federal and state Safe Drinking Water Act requirements. In some rare cases, water quality can degrade within buildings due to localized plumbing problems leading to consumer concerns. At your request, the SFPUC recently inspected your facility and collected water samples to determine if any localized plumbing problem exists. The results of the inspection and sampling (attached) showed that the vast majority of sample results were within normal ranges. You have a few isolated minor issues at the highlighted sample site locations shown on the attachment. These minor issues can be mitigated by conducting more frequent flushing before using the water. Alternatively, your department can consider installing a bottle-less water dispenser, containing an aesthetic point-of-use filter, which can be procured via an existing Purchasing Department contract.

If you have any additional questions, please feel free to contact Mike Conroy (650) 652-3128 or me.

Sincerely,

Andrew DeGraca, P.E.

cc: Michael Conroy

Mayor's Bottled Water Directive
Treasure Island Facilities-Drinking Fountains/ Break Rooms
10/16/07

Date	Address	Sample Location	Chlorine Residual ¹	Temp °F	Total Coliform Bacteria ²	Alkalinity Mg/L	Chloride Mg/L	Conductivity UMHOS/CM	Hardness CaCO ₃ mg	Turbidity NTU ³	pH	Copper Mg/L ⁴	Iron Mg/L ⁵	Comments All
10/16/07	Admin. Bldg.	Room 207	1.49	66	A	16	3	61	14	0.34	9.16	0.1	0.1	
10/16/07	Bldg. 264	Kitchen sink	0.43	69	A	16	3	65	14	0.56	8.98	0.1	0.1	See A
10/16/07	Treatment Plant	Kitchen sink	1.17	64	A	16	3	64	18	0.38	9.18	0.1	0.1	
10/16/07	Fire Dept. Training F.	Kitchen sink	0.42	66	A	14	4	65	16	0.39	8.94	0.1	0.2	See A
10/16/07	Fire Station	Kitchen sink	1.36	64	A	16	3	64	14	0.31	9.22	0.1	0.1	
10/16/07	Police Substation	Kitchen sink	1.38	70	A	16	3	63	12	0.34	9.18	0.1	0.1	
10/16/07	Police Substation	Bathroom sink	1.41	72	A	16	3	65	16	0.32	9.24	0.1	0.1	
10/16/07	D&W Front Bathroom	Room 126 sink	1.41	72	A	16	3	62	16	0.35	9.31	0.1	0.1	
10/16/07	D&W Back Bathroom	Room 126 sink	1.42	70	A	16	3	62	14	0.31	9.14	0.1	0.1	

¹ Anything 1.0 indicates very low tap usage, building dead end, or high building detention time

² A is Absent : P is Present

³ Turbidity above 1.0 indicates some type of plumbing issue (i.e. corrosion)

⁴ Regulatory Action Level is 1.3

⁵ Regulatory secondary Aesthetic (non-health) standard is 0.3

Comments

^A Lower Chlorine / High Temperature = Low usage, Flush

^B High NTU/High Iron = Galvanized pipe







POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO

THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4803

HEATHER J. FONG
CHIEF OF POLICE

May 5, 2008



Ms. Mirian Saez
Executive Director
Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
SF., CA 94130

SENT VIA FACSIMILE TO (415) 274-0299

Reference: Treasure Island Crime Statistics – April 2008

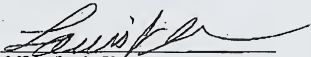
Dear Ms. Saez:

There were twenty-two incident reports filed with the San Francisco Police Department about occurrences on Treasure Island and Yerba Buena Island during the month of April 2008. Please see Attachment A for specific information.

Please Contact me at (415) 553-9154 or at Daniel.McDonagh@sfgov.org if you have any questions.

Sincerely,

A/C Douglas Carr
Captain – Southern Station

By: 
Officer Louis Glaser
Southern Station
(415) 553-7959

[illegible]

Part 1 Crimes April, 2008	
Assult 5	Robbery 1
Burglary 3	Sex Offenses 1

Category	Count
Homicide	1
Vehicle Theft	1
Arson	1
Larceny	1
Total	12



TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND

NOTICE OF MEETING CANCELLATION

Please note that the May 6th meeting of the Treasure Island/ Yerba Buena Island Citizens Advisory Board (CAB) has been cancelled.

The next meeting is scheduled for June 6th, 2008, at 6:00 at San Francisco City Hall, room 305. 1 Dr. Carlton B. Goodlett Pl, San Francisco, Ca, 94102

Please contact Andrea Bruss at (415)554-6661 with any questions.

MEETING AGENDAS AVAILABLE ON E-MAIL

If you would like to receive TICAB meeting agendas by e-mail, please send your name and e-mail address to TICAB@sfgov.org.

Disability Access

The Treasure Island Citizen Advisory Board holds its regular meetings at San Francisco City Hall. City Hall is accessible to persons using wheelchairs and others with disabilities. Assistive listening devices are available upon request. Agendas are available in large print. Materials in alternative formats and/or American Sign Language interpreters will be made available upon request. Please make your request for alternative format or other accommodations to the Mayor's Office on Disability 554-6789 (V), 554 6799 (TTY) **at least 72 hours** prior to the meeting to help ensure availability.

The nearest accessible BART station is Civic Center Plaza at the intersection of Market, Grove, and Hyde Streets. The accessible MUNI Metro lines are the J, K, L, M, and N (Civic Center Station or Van Ness Avenue Station). MUNI bus lines serving the area are the 47 Van Ness, 9 San Bruno, and the 6, 7, 71 Haight/ Noriega. Accessible curbside parking is available on 1 Dr. Carlton B. Goodlett Place and Grove Street. For more information about MUNI accessible services, call 923-6142.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based scented products. Please help the City to accommodate these individuals.

The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact: Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sof@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the SOTF or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

Pacifica II Project

Please enjoy this information binder about the Pacifica II Project and where the 8' replicas were installed at the City of Pacifica and the City College of San Francisco. The statue means much to a lot of different people.

It also contains an update on the Official Hostess and Theme Girl for the 1939/40 Worlds Fair.

Also, enjoy the included article *Treasures* by Anne Schnoebelen on the wonderful art from the Fair.

From time to time you will receive additional updates to these articles and others that will add to the Pacifica II project purpose, history, and future.

The last page is an interesting connection between one of the ancient wonders of the world and the Pacifica Statue.

Enjoy!

Bringing back the future to Treasure Island
4100 Redwood Road #408 Oakland, CA 94619 (510)531-7766





Pacifica II Project



Pacifica II Project Promotional Binder

Index

Section 1	Executive summary
Section 2	Pacifica II 8' replica at City College San Francisco
Section 3	Pacifica II 8' replica at City of Pacifica 50 th
Section 4	Zoe Dell Nutter (1939/40 Fair Theme Hostess)
Section 5	Treasure Island then, now, next and its treasures
Appendix	Colossus of Rhodes & Pacifica II –Treasure Island

An Introduction To: THE PACIFICA II PROJECT

Advisory Staff From 1939 to 1940, there was a grand fair built upon newly constructed Treasure Island. This world's fair was formally known as the Golden Gate International Exposition (GGIE), but many people affectionately referred to it as "The Pageant of the Pacific."

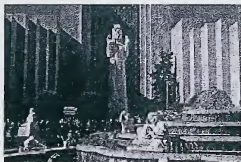
Masha Zakheim Within this fair was a common theme – that of Pacific unity. As President Franklin D. Roosevelt wrote to then Mayor of San Francisco, Angelo Rossi:

"Unity of the Pacific nations is America's concern and responsibility. San Francisco stands at the doorway to the sea that roars upon the shores of all these nations, and so to the Golden Gate International Exposition, I gladly entrust a solemn duty. May this, America's world's fair on the Pacific in 1939, truly serve all nations."

Robert Seward

President Roosevelt could not have been more right. For in this world's fair, more Pacific countries would be represented in the pavilions and exhibits they constructed than at any former American world's fair. From Australia to Japan; from Alaska to the Philippines; from Peru to Chile and Argentina; this was a celebration of the coming together of *all* the Peoples of the Pacific Rim.

Robert Fida



At a time in the world when global economic trade was still an infant compared to modern times, the Golden Gate International Exposition on Treasure Island marked the dawn of this new age of "economic interdependence with the Pacific."¹ One of the main attractions of the fair was the

Eric Stackpole

Court of Pacifica. Keeping order within the court was sculptor Ralph Stackpole's statue "**Pacifica**," an 80-foot tall homage to the core theme of the fair – Pacific Unity.

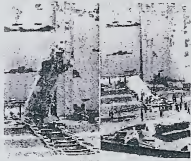
The statue "**Pacifica**" encapsulated every aspect of the fair. As

¹ Anne Schnoebelen, *Treasures: Splendid Survivors of the Golden Gate International Exposition* (Berkeley: GGIE Research Associates, Scriptorium, 1991)

Lisa
Rubens

Anne Schnoebelen wrote of "**Pacifica**" in her booklet, *Treasures*, "Her robe was decorated with images of music and fertility; her face was a composite of Pacific racial features." She was built as a symbol to welcome the Peoples of the Pacific Rim through the Golden Gate of San Francisco into America.

Terry
Peters



Unfortunately, just a couple of short years after the fair closed, "**Pacifica**" was demolished, as was much of the fair's art to make way for new Navy base and proposed airport that was to be built on Treasure Island.

"**Pacifica**" was arguably the most significant piece of art contributed to Golden Gate International Exposition. Her symbolism to San Francisco, the Golden Gate, and to the entire West

Coast to the People of the Pacific draws a parallel to that of the Statue of Liberty for those coming to America from across the Atlantic. This is why the statue "**Pacifica**" needs to be reconstructed on Treasure Island.

Claren
Palmer

The Pacifica II Project is a Non-Profit Corporation that has been formed for the primary purpose of rebuilding the statue "**Pacifica**." This priceless piece of lost art needs to be restored. "**Pacifica II**" will become a local monument with worldwide recognition as *her* very existence shall be a physical testament to our long celebrated diversity that we share in the San Francisco Bay Area.

Bill
Weber

The Pacifica II Project will:

- Raise money for the construction of "**Pacifica II**," a full scale replica of the 80-foot original statue "**Pacifica**."
 - All funds will be raised by volunteers and officers of **The Pacifica II Project**.
 - *No funds shall be required or requested from any local, state, or federal agencies for the construction or maintenance of the statue.*

Bette
Landis

This foundation will not only raise the money for the construction of the statue, but stay intact as an entity after construction has been completed to ensure the proper maintenance of the statue into the future, with no cost to the City of San Francisco.

This statue is a valuable piece of our history. It is an important

Joyce
Koch



piece of lost art that should be restored. As a swimmer and diver in Billy Rose's Aquacade on Treasure Island in 1939, Founder of **The Pacifica II Project**, Salvatore DeGuarda, remembers first-hand just what a marvelous statue she was. His last ambition, after nearly 50 years in the construction industry, is to restore this critical piece of lost art, one of historic and future importance.

Mona
Lombard

Our committee represents a cross-section of our community. This includes well-respected members of the art community and key members of the Art Department at City College, the home of Diego Rivera's Pan American Unity fresco. We even have one of Ralph Stackpole's great grandsons on board.



Sincerely,

Salvatore DeGuarda
Founder, **The Pacifica II Project**
4100 Redwood Road # 408
Oakland, CA 94619-2363

(510) 531-7766

saldegarda@yahoo.com

Sal DeGuarda, figure in Rivera mural, gifts CCSF with "Pacifica" statue replica from '40 World's Fair

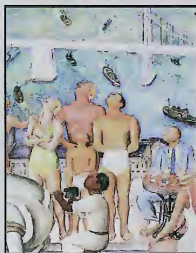
By Patricia Arack
Works of Art Committee

An eight-foot replica of sculptor Ralph Stackpole's *Pacifica*, an 80-foot mythic goddess from San Francisco's 1940 Golden Gate International Exhibition on Treasure Island, will join CCSF's art collection April 17 when it is installed in the garden plaza adjacent to the Diego Rivera Theatre.

The *Pacifica* reproduction, still larger than life at 4-feet tall, is the gift of Salvatore DeGuarda, Oakland contractor, former professional actor and swimmer, and one of the figures immortalized by Diego Rivera in his mural *Pan-American Unity*, which resides in the theatre's foyer.

The installation and ceremony begins at 12:30 P.M. on Thursday, April 17. The durable fiberglass sculpture will be installed on the south side platform of the Olmec Plaza and will face towards her companion artwork from the fair 68 years ago, the Diego Rivera mural. DeGuarda, at a robust and enthusiastic 88 years, will supervise the installation and present his gift to the college. Serving as CCSF liaison in planning the event is Will Maynez of the Works of Art Committee. All faculty and staff are invited to attend.

DeGuarda, who swam professionally at the fair in the Billy Rose Aquacade with Hollywood's mermaid Esther Williams—who may also attend the installation ceremony — has passionately pursued the



Sal DeGuarda, in white trunks, gazes upward in scene from Diego Rivera's "Pan American Unity" mural.

re-creation of *Pacifica* since he narrated a 50-year anniversary video of the GGIE 18 years ago for Channel 5 TV. His ultimate goal is to oversee the installation of a new, exact reproduction of the towering goddess, and is gathering funds and artisans to complete that immense project as the head of a non-profit organization, "Pacific II Project."

The handsome 88-year-old glows with enthusiasm for his project. "If it wasn't for this statue, I would probably be dead by now. I have great memories, and I love sharing them with people. I want my legacy to be the re-creation of *Pacifica* on Treasure Island and the sharing of my stories."

Although Stackpole sculpted *Pacifica* before World War II, the CCSF replica is actually a high-tech cat scan creation by Kreysler and Associates, a northern California fiberglass design, engineering and manufacturing firm which specializes in reproducing copies of architectural ornamentation and sculptures at almost any scale.

DeGuarda provided Kreysler with Stackpole's three-foot working model from the fair. The firm's 3-D surface mapping digitizer accurately mapped the surface of the model by taking precise coordinates, enlarged the digitized model to eight feet, then fed the results into a computer controlled cutting/milling machine, and



Sal DeGuarda today

ultimately created the exact-to-scale replica of the original sculpture.

The original *Pacifica*, a streamlined peaceful concrete goddess embossed with mythic symbols, captured the theme of hope for unity among the emerging Pacific Rim countries represented at the fair. *Pacifica* presided over the Court of *Pacifica* on the west side of Treasure Island; the statue was pulled down and demolished in 1941 as Treasure Island geared up to be the prime west coast navy base as the US entered World War II. Ralph Stackpole's art-deco style can be seen today in his 1931 sculptures in front of the Pacific Stock Exchange building in SF's financial district.

Sal DeGuarda's likeness is painted in the Diego Rivera mural's left center panel, a young man gazing up and clad in white swimming trunks. He has had a life as colorful as the elegant Western garb he wears today. During World War II he traveled with Esther Williams to army bases, entertaining the troops, and then had a busy career in Hollywood for almost a decade, appearing in many movies for Universal Studios as actor John Dexter—*Thirty Seconds Over Tokyo*, *Back to Bataan*, the lead in *Buffalo Bill Rides Again*, among others. After his film career he returned to his native Oakland and entered the family concrete business, which is now run by his son as DeGuarda makes his dream of returning *Pacifica* to Treasure Island become a reality.

DeGuarda has also given another replica to the City of *Pacifica*, which is named after the statue. For more information, photos, and to donate to DeGuarda's *Pacifica II Project*, go to <http://www.pacificastatue.org>.



Photo by Anne Schnoebelen
DeGuarda's replica of "Pacifica"

Unveiling of Pacifica II Statue April 17, 2008 City College of San Francisco



Sal DeGuarda
Donor



Pacifica
1939



12th Naval Dist. Band
with Lisa Rubens



Guests L. to R.
Lorraine Garcia Nakata
Julia Bergman
Masha Zakheim
Bob Seward
Guadalupe Rivera Marin



Patricia Arack
Instructor
ESL Department

Build it
and they
will come.





Sal DeGuarda and Guadalupe Rivera Marin
Daughter of Diego Rivera
Unveiling of Pacifica II Statue
April 17, 2008
City College of San Francisco

CITY CURRENTS



A NEWSLETTER FOR THE CITY COLLEGE COMMUNITY

VOLUME XXII • NUMBER THIRTY-THREE

APRIL 28–MAY 4, 2008

Photo by Alex Luthi/The Guardsman



'Pacifica' statue gift from Sal DeGuarda unveiled

An eight-foot-tall replica of sculptor Robert Stackpole's "Pacifica," the 80-foot-tall mystic goddess from the Golden Gate International Exhibition of 1939-40, was dedicated April 17 in the garden of the Diego Rivera Theatre on the Ocean Campus. The statue is the result of efforts by the Pacifica II Project. Pictured at the ceremony (left to right) are Will Maynez of the CCSF Works of Art Committee, Bill Chamberlain with Pacifica II, Sal DeGuarda who spearheaded the creation of Pacifica II, Dra. Guadalupe Rivera Marin who is the daughter of Diego Rivera, and Mona Lombard of Pacifica II. DeGuarda was a swimmer with the Billy Rose Aquacade at the Exposition; his likeness was painted in the Pan American Unity mural's left center panel as a young man gazing up and clad in white trunks.



October 2007

Special Offer!
Subscribe Now

Oakland Magazine - October 2007 - In The Mix

[EMAIL THIS PAGE](#) [PRINT THIS PAGE](#) [DELICIOUS](#) [DIGO](#)

In the Mix

Returning *Pacifica* to Treasure Island



The year was 1939, and a 20-year-old Oakland athlete named Sai DeGuarda was living a dream. He was performing in the Billy Rose Aquacade at the Golden Gate International Exhibition on Treasure Island. The thrill of swimming with icon Esther Williams was something he would never forget.

But there was another lady that captured his fancy, and continues to hold it today.

DeGuarda's dream, in his golden years, is to rebuild the 80-foot sculpture called *Pacifica* that was erected for the fair as a symbol of Pacific Rim unity. "That statue should never have been torn down," says DeGuarda, who watched the Navy destroy the grand lady a year after the Expo ended. "She was the most significant piece of art at the World's Fair," he laments. He compares *Pacifica* to the Statue of Liberty in New York and envisions restoring her to prominence on Treasure Island.

Pardon the pun, but isn't rebuilding this statue a monumental project for an 87-year-old man? Not if you're a guy like DeGuarda. A contractor for more than 60 years, he's rebuilt it a thousand times in his mind. "I go to sleep every night thinking about this statue," he admits.

In fact, DeGuarda has built an exact replica in miniature and has been given the OK to construct an 8-foot statue of *Pacifica* in, fittingly, the town of Pacifica. "It's going up in the entrance to one of the city buildings," he says, adding that the money for the project is coming out of his own pocket. "My son told me, 'Dad, I'll run the construction business, and you concentrate on making the statue.'"

Now he's hired a fundraiser and come up with a plan and a pamphlet for soliciting donations for his Treasure Island project. There's also the matter of convincing the Redevelopment Agency on Treasure Island that the statue should be rebuilt. "We have to do a little maneuvering to get them off their rear ends," laughs DeGuarda, who has met with officials and knows how slowly the wheels of bureaucracy can turn.

But it's hard to argue with his vision. DeGuarda sees the statue as a huge PR piece for Treasure Island and even Oakland. "Every time there's a football game or a baseball game, the blimp will fly overhead and show the *Pacifica* statue to the world."

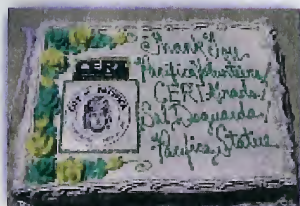
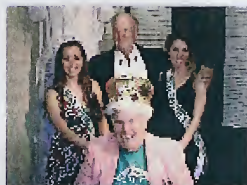
Will DeGuarda's dream be realized? Will he live to see his beloved *Pacifica* with her outstretched hands, standing proudly on the site that she graced almost 70 years ago? "It's what keeps me going now," he says with an unwavering voice. "This is my legacy."

—Ginny Prior

OCTOBER FEATURES

Pacifica II On The Move At City Of Pacifica

March 10, 2008



The unveiling of a special statue

Pacifica Tribune Staff

Article Launched: 03/11/2008 07:11:31 PM PDT



From left, City Councilmember Pete DeJarnatt, Miss Pacifica 2008 Adriana Manner, Mayor Pro Tem Julie Lancelle, Mayor Jim Vreeland, Sal DeGuarda, City Councilmember Sue Digre and Miss Pacifica 2007 Sterling Wolper. (Photos by Frank Cimo)



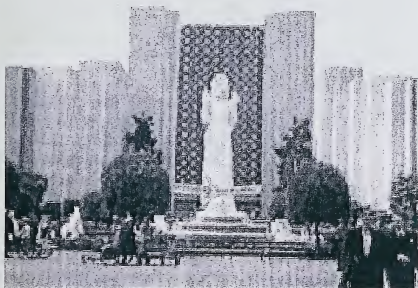
Pacifica dignitaries gathered at the front entrance of the City Council Chambers Monday night for the official unveiling of the "Pacifica" statue, an 8-foot replica of the 80-foot statue created by sculptor Ralph Stackpole for The San Francisco Golden Gate Exhibition in 1939 and 1940. The local version was created by Sal DeGuarda, 87, who in 1940 swam at the Exhibition with the Billy Rose Aquacade. It was presented to the city of Pacifica as a gift. (Photos by Frank Cimo)

Statue of dreams

Sal DeGuarda to unveil 8-foot rendition of famed 'Pacifica' goddess symbolizing unity

By Jean Bartlett CORRESPONDENT

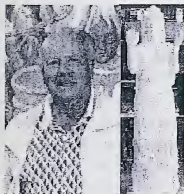
Article Launched: 03/04/2008 05:36:40 PM PST



In 1939 and 1940, the 80-foot statue "Pacifica" by sculptor Ralph Stackpole stood with hands outstretched and welcomed visitors to The San Francisco Golden Gate Exhibition held on the then recently engineered marvel, Treasure Island. She was the Exhibition's mythical goddess of the western ocean and like the fair itself she represented the advent of Pacific unity.

"I saw the statue Pacifica as the symbol for new life," said 87-year-old Sal DeGuarda who in 1940 swam at the Exhibition with the Billy Rose Aquacade. "The Depression was ending and she represented the possibilities of dreams."

In 1941, the island was scheduled to be used as an airport and the goddess "Pacifica" was leveled to make ready for a country heading to war. In 1957,



a coastal city took its new name based on the remembrance of that 80-foot statue and in this city of Pacifica, two three-foot working models of Stackpole's lady of the West, took up their respective quiet residence over the front stairs at City Hall and within the City Council Chambers.

Fifty years after Pacifica became a city, that 1940 Golden Gate Exhibition swimmer from Oakland will stand at Pacifica's City Council Chambers and unveil an extraordinary historical gift: an 8-foot replica of the

statue who once ruled the Pacific.

"This is my legacy," said DeGuarda whose ultimate goal is to build an 80-foot "Pacifica" and return her to her place of prominence on Treasure Island. This 8-foot replica, built and funded through DeGuarda's own vision and wallet, is a demanding motivator to help blaze a path through the often slow-churning wheels of bureaucratic approval, in this case the City of San Francisco. But DeGuarda has always been one to make things happen.

Born in New Jersey in 1920, Salvatore DeGuarda came to Oakland when he was 3. Like his father, Sal would make his living as a contractor specializing in cement — that is when Sal wasn't swimming or working in the movies or being memorialized in Diego Rivera's 1940 San Francisco mural Pan American Unity (on view at City College of San Francisco Ocean Avenue campus).



"In 1939 I was out of high school," said DeGuarda. "It was the Depression and there was no work. So a couple of friends of mine and I jumped

the freight train in search of jobs. In Reno, I turned our last nickel into \$2.50 at a slot machine. Now we were ready! We got stuff for sandwiches and hopped on the train to Utah. There was this little guy in the car, a nice guy, he had glasses and he was hungry.

He wanted to trade his glasses for a sandwich. Of course we gave him a couple of sandwiches and didn't take his glasses. When the train stopped in Ogden, we got to hear him play drums. He was good and he went on to make a name for himself. His name was Sammy Davis. Jr."

"But my friends and I still needed work," said DeGuarda. "So we headed out to New Jersey on the rails." Making a connection, a lifelong natural gift of DeGuarda's, Sal ended up playing with the farm team for the New York Football Giants. He was offered \$50 a game.

"Wow!" said DeGuarda. "I thought I was going to be a millionaire." Three games in, Sal injured his leg and it was back to unemployment. "I was ready to go home. I stayed a little longer to catch the New York World's Fair with my uncle. That's where I saw Johnny Weissmuller and Eleanor Holm in the Billy Rose Aquacade and I can tell you, I was impressed."

"Back in California, Billy Rose ran an ad looking for swimmers and divers for the Golden Gate Exhibition," said DeGuarda. "I'd always been a good swimmer so I thought I'd give it a try."

"About 2,500 guys showed up at the Civic Auditorium. You had to walk across the stage and strip to the waist. That cut the job seekers by half. Next we went to the Tonga Room in the Fairmont Hotel and swam a lap. Over the next two weeks of eliminations, we went from 2500guys down to 22."



DeGuarda got to know Gertrude Ederly, the first woman to swim the English Channel and Esther Williams, competitive swimmer and movie star. He also had his photograph taken

when he and two of his Aquacade swimming buddies climbed out of the water from their 'World Fair' routine. Years later he found the results of that photograph incorporated into Diego Rivera's representation of the Fair.

"Being in the Billy Rose Aquacade was a big part of my life. For eighteen weeks we did four or five shows a day. The whole thing was incredible."

After that adventure came a short stint in Hollywood. "I had a summer job at a boys' camp for the kids of the Hollywood elite," said DeGuarda. "That lead to an introduction to producer George Stevens and he introduced me to films."

DeGuarda's first film was with Mae West. The film was titled "The Heat's On" and apparently most of Sal's part was cut for being too racy.

"Mae and I were an item for about a year," said DeGuarda.

For his next film, "Forever Amber" Sal changed his name to John Dexter. "Otto Preminger was the director and he didn't like Italians and I wanted the job." As John Dexter, Sal would go on to have parts in about forty films including "Buffalo Bill Rides Again" and "Laura" with Gene Tierney. But most of his work life he has spent in concrete which included creating waterfalls and laying down textured concrete.

When newscaster Dave McElhatton (KPIX Channel 5) invited DeGuarda to provide narration for the 50th Anniversary of the San Francisco Golden Gate Exhibition, DeGuarda saw the footage on the destruction of the eighty-foot

Pacifica statue and found a dream. "I said to Dave: one day, I'm going to rebuild that statue."

"Every night from the time of that 50th anniversary broadcast, I have rebuilt that statue in my head," said DeGuarda. "Finally I came upon the idea of building it like a ferro-cement boat. I would build a shell with walls so thick and then invite the sculptors in." And the sculptors came.

San Francisco architectural restoration sculptor Michael Casey has volunteered to do the head. Sculptor Robert Fida is involved. There was the fellow who volunteered and built the molds from the three-foot models. There are the connections DeGuarda has made since he found his connection to the Rivera mural which includes Marsha Zakheim. (Zakheim's father worked with Rivera and did the mural in Coit Tower.) Then there is the lovely Pacifica lady whom DeGuarda will always thank for introducing him to the quiet little statues in the homes of our City government. So many have donated their time and their energy to DeGuarda's cause because they recognize — it is a cause for all.

"I have lived this long because of this statue," said DeGuarda. "And when I see the eighty-foot statue "Pacifica" looking out again from her realm on Treasure Island it will mean everything."

If You Go:

Event: Unveiling of 8-foot Pacifica statue donated by Mr. Sal DeGuarda

Where: City Council Chambers, City of Pacifica, 2212 Beach Blvd.

When: Monday, March 10 at 6:30 p.m. Regular Council meeting begins at 7 p.m. To find out more and how you can help move this project forward visit: <http://pacificastatue.com>

Frankly Speaking: March 12, 2008

A symbol of Pacifica Tribute

By Frank Winston Pacifica Historical Society

Article Launched: 03/11/2008 08:28:13 PM PDT

For over 100 years, historians, artists, the media, politicians, and other members of the public have pondered over the issue of what symbol would be most fitting as an emblem of the spirit of liberty and freedom to welcome visitors from the Pacifica Rim community to our shores.

Included in the mystery and history is what design should it be, and where ought it to be located.

Over the years there have been proposals to locate it on San Francisco's waterfront, Angel Island, Alcatraz or Treasure Island.

But tied into that dream are turf wars, and differing philosophies.

As to location, the most popular suggestion was Angel Island, which served as the disembarking location for ships from Asia and South America.

A significantly-designed symbol might serve a similar purpose as did the Statue of Liberty and New York's Ellis Island.

But arguing against this was belief that that U.S. Immigration officials, which had operated an Immigration station at Angel Island for several decades, with some of its detainees testifying how often the service wrongfully discriminated, detained illegally, even tortured and improperly denied admittance to arriving immigrants, particularly the Chinese.

In any event, now that jurisdiction has passed to the U.S. Park Service, and is not really San Francisco.

The historic site was closed as an immigration station over 50 years ago as more and more passengers arrived at the San Francisco Airport, rather than by ship.

Another locale to be considered was Alcatraz. That infamous island was home to incorrigible federal prisoners in the '30s and '40s.

In any event, that is not under the jurisdiction of San Francisco. Even today, its history includes a battle over the claims of Native Americans to that island.

Even the concept of choosing somewhere by San Francisco's historic waterfront area with its Fisherman's Wharf, Maritime Museum, and Ferry Building, would probably generate a battle over where it should be located, with each of those possible sites, and even Pier 39 or AT&T Park pushing vociferously for it to be in someone else's backyard.

Further, all kinds of environmental or consumer battles would ensue (remember few supported rebuilding the Embarcadero Freeway after the Loma Prieta earthquake of 1989 rendered it impassable, let alone politically impossible to restore.)

But the ideal oft-suggested location remains Treasure Island home of the 1939-40 World's Fairs, which island was intended to be a small airport but became the property of the U.S. Navy who occupied it for many years, until it recently became the actual property of the City and County of San Francisco.

What a desirable location to host such a monument to peace, where it can be seen by the visitors and locals as a welcoming beacon to the United States of America.

A parallel inquiry centered around what should the symbol look like?

How to select the design. Shall we have a contest? It took 15 years for the contest to complete itself in selecting a monument to President Franklin Delano Roosevelt.



In our current time, it took five years to select a design for a permanent remembrance to "Ground Zero" at the former World Trade Center in New York City. But San Francisco visionary, 87-year old contractor and former Billy Rose Aquacade swimmer at the 39-40 fair, Salvatore DeGuarda says that such a contest is unnecessary or moot, because there was indeed such a symbol, a giant 80-foot statue designed by noted sculptures Ralph Stackpole, which was the symbol of that World's Fair at Treasure Island.

Although the original statue was not saved, Sal believes that a new 80-foot replica statue of the original design is possible and he is currently leading the charge for its creation and placing the replica at its roots in Treasure Island to occupy a space in front of the Treasure Island Museum where the statue can continue as a symbol of peace, a meaningful reflection of the World's Fair.

Why is this important to the City of Pacifica?

Because that statue was named Pacifica, and our city was named after it in the 1950s.

Equally important, when reinstated at Treasure Island it will raise the notoriety of our city and its pride.

The Pacifica Historical Society, currently developing its own museum in the Little Brown Church Building, will delight in a neighboring museum, with a focus on history of an island rich in memories of its different ownerships, culture, happenings, and its connection to some prime history of transport including ships and aviation.



Although the head of that statue is identified in the City of Pacifica logo, an 8-foot model, donated to the City of Pacifica by Salvatore, was unveiled Monday night at the City Council Chambers in celebration of our City's 50th Anniversary of the founding of the City, where Sal himself was present.

As a 5-year old, I had my picture taken in front of the original "Pacifica.

Sadly, for me, that photograph and the statue are both lost to history.

When Sal's foresight does become a reality, the 80-foot tall replica of Pacifica is to be observed at its home on Treasure Island, generations to follow may again thrill at the welcome figure of Pacifica, the statue; and on that day, I will again pose for a photo with the lady, but this time I will treasure my photo with the new treasure of Treasure Island.

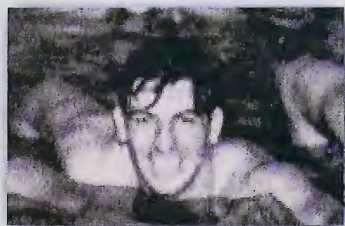
I hope it is taken from an historic Graflex camera, like it was in 1939.



Treasure Island's official "Theme Girl" Zoe Dell Lantis flashes some leg and her trademark sparkling smile.

Zoe went on to:

- Log 100,000 air miles for the Fair
- Log over 2000 hours as a commercial instrument pilot
- President of the Aviation Hall of Fame
- Board member of San Francisco Aeronautical Society
- 2005 San Francisco Mayor's Commendation
-



The Swimmer and the Aviatrix meet again after 68 years

Sal DeGuarda - Billy Rose Aquacade
swimmer at 1939/40 SF Worlds Fair

Zoe Dell Nutter - Official Hostess
and Pirate Theme Girl
for 1939/40 SF Worlds Fair.

[Commendation to honor Zoe Dell Lantis Nutter.]

Resolution commending Zoe Dell Lantis Nutter, recipient of the San Francisco Aeronautical Society's Achievement in Aviation Award for 2005.

WHEREAS, As a young student of the San Francisco Ballet, Zoe Dell Lantis Nutter was chosen to be the official hostess and Pirate Theme Girl of the 1939 – 1940 Golden Gate International Exposition on San Francisco's Treasure Island; and,

WHEREAS, As the Pirate Theme Girl she traveled more than 100,000 miles by commercial airliner to publicize the exposition and commercial air travel; and

WHEREAS, Zoe Dell was appointed the Official Representative from the State of California to the 1958 Brussels World's Fair, the flying Ambassador to Seattle's 1961 Century 21 Exposition, and the 1964 New York World's Fair; and,

WHEREAS, Zoe Dell Lantis Nutter has logged over 2,000 hours as a commercial multi-engine instrument pilot, has flown search and rescue missions in the Civil Air Patrol, and has served as a member of the Ninety-Nines, an international organization of licensed women pilots; and,

WHEREAS, Ms. Nutter is Trustee Emeritus of the Board of Trustees of the National Aviation Hall of Fame in Dayton, Ohio, and was elected its first woman President and Chairman of the Board in 1988; and,

WHEREAS, Ms. Nutter currently serves as a member of the Board of Directors of the San Francisco Aeronautical Society, the non-profit organization that supports San Francisco Airport's Aviation Museum, adding her extensive knowledge, experience and dedication to the Society's mission of preserving San Francisco's rich aviation history; and,

1 WHEREAS, Zoe Dell Lantis Nutter has been named the 2005 Honoree for the
2 Achievement in Aviation Medallion given by the San Francisco Aeronautical Society; now,
3 therefore, be it

4 RESOLVED, That this Board of Supervisors does hereby commend and congratulate
5 Zoe Dell Lantis Nutter and thank her for her contributions to San Francisco's aviation history
6 and does hereby declare Friday, April 28, 2006 as Zoe Dell Lantis Nutter Day in San
7 Francisco.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Resolution

File Number: 060486

Date Passed:

Resolution commending Zoe Dell Lantis Nutter, recipient of the San Francisco Aeronautical Society's Achievement in Aviation Award for 2005.

April 18, 2006 Board of Supervisors — ADOPTED

Ayes: 9 - Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, Mirkarimi, Peskin,
Sandoval

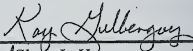
Excused: 2 - Alioto-Pier, McGoldrick

File No. 060486

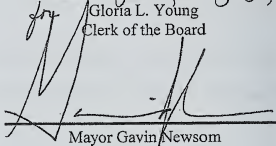
I hereby certify that the foregoing Resolution was ADOPTED on April 18, 2006 by the Board of Supervisors of the City and County of San Francisco.

4-20-06

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Gavin Newsom

An Interview with Zoe Dell Nutter

June 27, 2007 by Patte-Barham

Tolucan Times – Toluca Lake, California



Do dreams dare to come true? Yes, they do. Let's look at a woman whose record as a pilot still gets accolades from Fly boys who have to compete with her. She's Zoe Dell Nutter, a diminutive doll. But don't let those blonde locks, blue eyes and dazzling smile fool you. She's one of the best in the business of flying.

It's time to meet this personable little lady, and if we can't fly in the sky with her, Zoe Dell will take off those goggles and tell us how it all came about. The National Aviation Hall of Fame has all her records and her multi-donations to this cause. So fasten your seat belts and enjoy this ride! Here's our exclusive tête-à-tête with Zoe Dell.

TAPE TO TYPE

Q: How did you get started in aviation?

A: My career in aviation began as the "Official Hostess and Pirate Theme Girl" of the 1939 World's Fair in San Francisco. When I learned to fly, women were not encouraged to become pilots. I now serve on the Board of Directors at the San Francisco Aeronautical Society, and am still a member of the Ninety-Nines, the International Organization of Licensed Women Pilots.

Q: Zoe Dell, where are you from originally?

A: I was born in western Oregon in a mountain lumber camp. I decided at the early age of six that I was going to become a dancer. It was the beginning of the depression. I even washed dishes to pay for my dancing lessons.

Q: After beginning as a dancer, how did you wind up in the world of aviation?

A: Well, the San Francisco World's Fair happened along ... [and they] paid me to promote commercial airline travel. About a year and a half later, I moved to Las Vegas where I took

flying lessons. I had to cancel my USO shows.

Q: How did your husband feel about you flying?

A: He felt I was getting too independent. That marriage didn't test.

Q: How did you begin your career?

A: I started my career with Piper Aircraft in Monterey, Calif. in the early 1940s. I was offered my job with Piper by Mr. Piper and learned to fly in a Piper airplane. I also flew Cherokees. Piper is William Piper. I consider him the father of aviation. He was the president and offered me a job. We were building and developing general aviation. I was showing aircraft and selling courses and encouraging women to fly so they could land a plane in case of an emergency. The men didn't want their wives to fly. They didn't want them to have anything to do with airplanes.

Q: What kind of courses did you sell?

A: I started a Pinch Hitter course for women. ... I talked to them and encouraged them to learn how to land a plane, how to use the radio and how to read navigation charts. We grew so fast we needed a special trainer, and there was one being manufactured in Dayton. They sent me to Dayton to pick up a Bede trainer airplane. Everybody in America had a deposit on the Bede trainer, and the FAA had not even certified it. To purchase the airplane, I needed to put a deposit on it and to get on the list would be a problem. They told me that if I could not get a trainer, I might not have a job when I returned.

When I went to Dayton, I met with a longtime friend who lived in Dayton, and I told him my sad story. He told me how he had a friend who knew Mr. Bede, the president of Bede Aircraft, and they might be able to help me obtain the plane. ... Well, I went out to look at the airplane and oh, I didn't like it [at] all.

So my boss sent me to Vero Beach, Florida where I picked up a conventional trainer, a Cherokee 140. Vero Beach, Florida, that's where the Cherokee line was manufactured. It was a four-place airplane, trainer, and I loved it.

Q: What title did you have as a pilot?

A: Chief Pilot. There were not many jobs for women.

Q: What happened to the plane?

A: The FAA wouldn't certify it, because it wasn't perfectly safe. The FAA, that is their job, to

test and test and test.

Q: How did you handle the weather?

A: Very carefully, because the changes in the weather can be so violent, the mountains have a law of their own. They can be your friends too.

Q: Did you ever get scared of landing? What were the worst problems up there? Like fog or something?

A: Not really, I always planned to go someplace else if the fog came in. A pilot always plans ahead for what one might encounter.

FACTS FOR FOLKS:

—In 1929 there were approximately 100 women who had a current pilot's license.

—During WWII there were up to 25,000 who had at least 100 hours in the air and who applied for the Women Airforce Service Pilots (W.A.S.P.) program. Out of this group, about 1,100 of them became active W.A.S.P. and ferried all kinds of planes around the country for the military. When the war ended, because they were not active military, the W.A.S.P. were released from their duties and had to find their own way home. They suppressed their incredible accomplishments and became teachers, nurses and housewives.

—Interestingly, during the last 40 years, the numbers of women pilots have not increased. Only 6 percent of the pilot populations are and have been women holding current pilot's licenses.

WHO'S WHO – AND WHERE

Zoe Dell Nutter's husband, Ervin J. Nutter, was one of the founding fathers of the Aviation Hall of Fame in 1962. Four years later, when he took Zoe Dell to her first "Enshrinement Ceremony," she was thrilled to see so many aviation personalities honored and to witness their outstanding ceremony.

It was Zoe Dell who visited Washington, the Pentagon, and the Commanding Generals at Wright-Patterson AFB to ask that the National Aviation Hall of Fame be located within the United States Air Force Museum complex at Dayton, Ohio, where it is now located and is open to the public.

One of Zoe Dell's legislators then put her on the Board of Trustees at Ford's Theater in

Washington, D.C. Over a period of 16 years with the Ford's Theater, she developed connections to promote aviation and the National Aviation Hall of Fame at a national level. One of Zoe Dell's greatest contributions to aviation was a dream of her own, a vision that the industry should have its own hall of fame. In the words of Governor George Voinovich, "Because of her, I became interested, as governor, in helping to make her dream a reality in Ohio. And why not? Let me repeat the names of some of America's foremost aviation pioneers: the Wright brothers, John Glenn, Neil Armstrong, and, yes, Zoe Dell Nutter – Ohioans, one and all." This partnership with aviation became the "National Aviation Hall of Fame."

In 1988, after having served for 12 years on the Board of Trustees, Zoe Dell was elected the first woman president and chairman of the "Congressional National Aviation Hall of Fame" in Dayton, Ohio. Of all her great accomplishments, she is proudest of being able to use her promotional skills from her aviation career to develop, lead and promote the Official Congressional National Aviation Hall of Fame.

In May, Zoe Dell Lantis Nutter was in Los Angeles to witness Commander Eileen M. Collins receive the Howard Hughes Memorial Award presented by the Southern California Aeronautic Association. Past honorees read like the Congressional National Hall of Fame enshrines: Jack Northrop, Senator Barry M. Goldwater Sr., C.L. "Kelly" Johnson, Chuck Yeager, Paul B. MacCready, Neil Armstrong and Burt Rutan.

Eileen is the 2005 space shuttle Commander of Discovery STS-114, who lead America back Into the Space Program, after the tragic breakup of the space shuttle Columbia accident. In 1999 she piloted the first space shuttle flight commanded by a woman. At her official announcement as the First Woman Space Shuttle Commander, Eileen stated, "When I was a child, I dreamed about space – I admired pilots, astronauts, and I've admired explorers of all kinds. It was only a dream that I would someday be one of them..."

I was privileged to meet Eileen when she was in Los Angeles as a special guest. So with one foot in space - IN ZOE DELL'S CASE, I'll attest that Dreams Do Come True!



TREASURES

SPLENDID SURVIVORS
OF THE GOLDEN GATE
INTERNATIONAL EXPOSITION
Anne Schnobelen



Cover photo: the Court of Pacifica, 1939 (Gabriel Moulin)

TREASURES

SPLENDID SURVIVORS OF THE GOLDEN GATE INTERNATIONAL EXPOSITION

Anne Schnobelen

*Internet edition
published by the
Treasure Island
Museum Association*

Click on pictures to enlarge



1. Treasure Island's dramatic western shoreline, as seen from a passenger ferry.

INTRODUCTION

A boy rides down a South American river on the back of an alligator; two girls relax on the beach of a South Pacific island; a boy from Alaska, crouching on an ice floe, carefully aims his harpoon at a fish just below the surface; a man from India meditates as he reclines on a branch of the Tree of Life. Altogether, sixteen massive sculptures, representing a community of Pacific peoples, are arranged around a handcrafted ceramic fountain., glazed in brilliant shades of blue, green, and yellow, the size of a suburban swimming pool. Reaching from rim to rim of the fountain is an enormous relief map of the Pacific Basin. The Hawaiian Islands, at the center, thrust up from the ocean's cobalt blue floor; scattered below them are the islands of the Pacific, and encircling the rim of the basin are the continents of North and South America, Asia, and Australia. Just south of Hawaii, four blue whales spout water high into the air.



2. A Navy colorguard poses for a portrait in the Court of Pacifica, 1953.

From 1941 until 1988, the Pacific Unity sculptures and the Pacific Basin Fountain were displayed together in a landscaped garden on Naval Station Treasure Island in San Francisco Bay. The garden was a setting for picnics and parties on the base, and was a popular place for official Navy photographs. But in 1938 and 1939, when Treasure Island was a magical island city of towers, pyramids and temples, they were seen by millions of people who came to share in Treasure Island's spectacular celebration of the peoples and cultures of the Pacific.

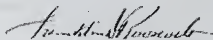
This is the story of those works of art, and of the place and the occasion for which they were created – Treasure Island and the Golden Gate International Exposition.



3. Illustrator Ken Sawyer envisioned crowded skies over Treasure Island Airport, 1938.

The Pageant of the Pacific

Unity of the Pacific nations is America's concern and responsibility. San Francisco stands at the doorway to the sea that roars upon the shores of all these nations; and so to the Golden Gate International Exposition I gladly entrust a solemn duty. May this, America's world's fair on the Pacific in 1939, truly serve all nations.



President Franklin D. Roosevelt
Letter to Mayor Angelo Rossi, 1938¹

For those who created the fair, and for many who attended it, the theme of Pacific unity was the heart and soul of the Golden Gate International Exposition (GGIE). The world's fair on Treasure Island was first conceived as a celebration of local achievements: the completion of the Golden Gate and San FranciscoOakland Bay Bridges. As planning for the fair progressed, its mission grew much more ambitious: it would "dramatize the expansion of the Pacific empire."²

The island itself was pledged to America's aspirations in the Pacific. Built in 1936 and 1937 by the federal government, Treasure Island was to be San Francisco's airport for Pan American Airways' China Clippers-flying boats offering the first regular commercial flights between America and Asia. As the flat, muddy new Atlantis took shape on San Francisco Bay, the bridge celebration grew into a "Pageant of the Pacific" heralding a new era of American interdependence with the Pacific, a dedication ceremony for the future airport and the new era that it symbolized.

No better place could have been chosen
— or created — for the occasion. From

Treasure Island, visitors had an unencumbered view of everything that the fair was to celebrate: the Bay Bridge, San Francisco itself, and the China Clippers revving up their engines in "The Port of Tradewinds" before they roared out over the Golden Gate. Due west of Treasure Island was the Golden Gate itself, spanned by its breathtaking new bridge. And beyond the gate was the whole world of the Pacific, San Francisco's new empire.

More Pacific countries built pavilions and exhibits at the GGIE than at any previous American world's fair. The fair's architects created a new style which combined

traditional motifs from all over the Pacific — North and South America, the Pacific Islands, and Asia. The buildings had the look of an ancient walled city, such as one might stumble upon while exploring the forests of Asia or South America: Mayan pyramids, Cambodian temples, sculptural ceremonial elephants — and pagodas, towers, ghats. Eighty-foot walls surrounding the exhibit palaces sheltered the "Magic City" from the outside world.



4. An official logo, crammed with significant images: Clipper sailing ship and flying China Clipper; the major continents of the Pacific; two new bridges; Treasure Island's skyline in silhouette.



5. A promotional map, 1938, promising GGIE pavilions and exhibits representing Pacific countries.

In the fair's courts, gardens and arcades, the union of Eastern and Western cultures was represented in sculpture and murals. Trams painted to look like elephants (presumably Asian elephants) conveyed visitors around the island. The Official Guidebook noted that the GGIE's lighting fixtures resembled Siamese ceremonial umbrellas. In Pacific House, visitors could learn about Pacific cultures and geography and admire a collection of rare decorative maps of the Pacific. The Hall of Fine Arts displayed a spectacular collection of European masterworks of sculpture and painting, including Botticelli's "Birth of Venus." But the GGIE also made art history with its display of fine arts from across the Pacific. In 1939, "The Pacific Cultures" exhibit was the largest and most valuable Asian and Pacific art collection ever

assembled in America. The GGIE was many things to many people: it meant employment to thousands at a time when jobs were scarce. Like all world's fairs, the GGIE was a showcase of the newest (science and industry, fashion, music), the biggest (artificial island, art collection, cash register, Civil War mural), the smallest (a collection of miniatures, a "display" of premature babies), even the wettest (Esther Williams and Johnny Weissmuller in Billy Rose's Aquacade). But the GGIE never let anyone forget that it was a Pageant of the Pacific, and that cultural and political marvels – from Siamese Ceremonial Umbrellas to economic interdependence with the Pacific – were waiting for America just beyond the Golden Gate.

The Art of Pacific Unity

The GGIE carried out the solemn duty entrusted to it by President Roosevelt with Pacific Basin architecture, with murals, sculptures, and maps, and with exhibits and lectures. But the theme found its most eloquent expression in two locations: the Court of Pacifica and Pacific House.

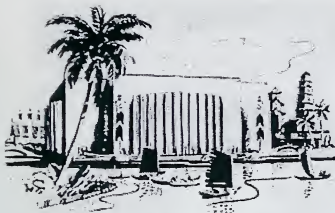
The Court of Pacifica, designed by architect Timothy Pflueger, was one of the GGIE's most attractive and popular courts. Presiding over the court was sculptor Ralph Stackpole's eighty-foot "Pacifica," the fair's mythical goddess of the western ocean. A colorful relief mural, 144 feet long, portrayed a procession of suppliants from the Orient and Occident meeting at the feet of the Buddha, against a (continued after sidebar) panorama of ancient and modern wonders (the temple at Chichen Itza, the Great Wall of China, the Bay Bridge). Murals by Maynard Dixon represented the fertile prairies and fields of the western United States, guarded by Native American deities. Arranged around the Fountain of Western Waters at the center of the court were twenty oversized sculptures representing the peoples of the Pacific. Its goddess, its Buddha, its Chichen Itza, and its symbolic fountain made the Court of Pacifica an open-air shrine to Pacific unity.



6. Donald Macky's fantastical Elephant Towers, inspired by architecture of Cambodia and Central America.

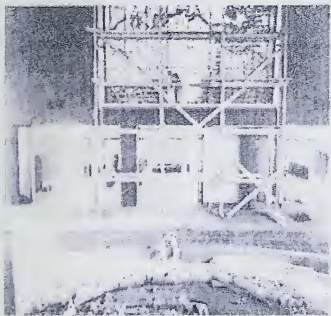
7. Siamese Ceremonial Umbrellas illuminate Lulu Hawkins Braghetta's Cambodian-inspired relief mural, "Path of Darkness."

8. Pacifica. Her robe was decorated with images of music and fertility; her face was a composite of Pacific racial features.



18. Pacific House, illustration by Ken Sawyer.

Pacific House had a more practical mission. The building, designed by architect William Merchant, featured a library, exhibit rooms, and space for social gatherings. Visitors came to Pacific House for lectures and exhibits on history and contemporary affairs, to meet visiting dignitaries, to browse in the library, or just to lounge in the "Pacific Moderne" bamboo furniture.



20. Pacific House interior, ca. early 1939; workmen put the finishing touches on Edgar Dorsey Taylor's stained glass map and the Pacific Basin Fountain.

The interior walls of Pacific House were covered with enormous maps of the Pacific, executed in stained glass, oils, and lacquers. At the center of the three-story atrium was the most spectacular map of all: a terra cotta model of the Pacific Basin, its water supplied by four spouting whales. The Pacific Basin Fountain was the room's decorative focal point. But true to the educational mission of Pacific House, the fountain was also used as a

THE PACIFIC UNITY SCULPTURES

The Pacific Unity sculptures were cast from poured concrete, and gleamed as though they were made of pale stone. Twelve smaller sculptures (2x lifesize) were arranged on the tiers of the Fountain of Western Waters. On the plaza surrounding the fountain were eight larger sculptures (4x lifesize). They represent major geographical areas of the Pacific: the Americas, the South Pacific, and Asia. The larger figures are posed as for formal portraits – poised and dignified. The smaller, more dynamic sculptures are captured in spontaneous action: dancing and making music, working, sleeping.

Asia: "The Orient" (Jacques Schnier), a man and woman reclining on branches of the Tree of Life. Three dancing Chinese musicians: "Flutist," "Blowing a Horn," "Clashing the Cymbals" (Helen Phillips).

North America: "Modern American Woman," "Indian Woman" (Carl George). "Alaskan Boy Spearfishing," "American Woman" about to dive into a pool, "Mexican Boy" napping on a basket (Ruth Cravath).

South America: Two "Incan Indians" astride kneeling llamas (Sargent Johnson). "Primitive Woman Making Farina," "South American Fisherman," "Young Native Riding An Alligator" (Cecilia Graham).

The South Pacific: "Polynesian Group," an athletic, adolescent boy and girl (Brents Carlton). "Islands of the Pacific," "Young Girls Resting in Sun Listening" to "Young Man Improvising Music" (Adaline Kent). Two girls, resting languidly on a beach, awoken to music made by a young man playing a ukulele.

Four of the sculptures – cymbal player, diver, fisherman, and ukulele player – have disappeared.³



9. The Fountain of Western Waters, Court of 6 Pacifica.

PACIFIC UNITY STYLE

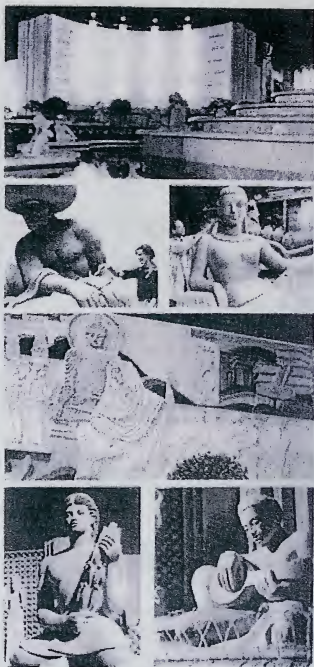


In the 1930s, the federal government sponsored public art to an extent that is unique in American history. National politics, the search for a distinct American vision in art, the influence of charismatic foreign artists, and a revived interest in "exotic" cultures converged to give American art in the 1930s a fresh, racy edge. The GGIE showcased almost everything that was significant in American art at that time.

In 1931, Mexican muralist Diego Rivera had visited San Francisco at the urging of Ralph Stackpole and Timothy Pflueger. During the Twenties and Thirties, Rivera and other muralists exerted a tremendous influence upon representational art in the United States. The center of progressive art in San Francisco, and Rivera's local headquarters, was the California School of Fine Arts (now the San Francisco Art Institute) where many of the GGIE's artists studied and taught.

The Pacific Unity sculptures are characteristic of the Thirties in their themes, which pay tribute to the common man; their proportions, which are heroic; and their stripped-down, streamlined look. They lack the conventional embellishments that often characterized American monumental sculpture, especially sculpture for world's fairs: classical proportions, flattering postures, flowing robes, wings, and other props derived from classical mythology.

The sculptures are weighty, compressed, and full of energy. The



11. *Night in the Court of Pacifica.*
12. Cecilia Graham with model of "South American Fisherman."
13. Jacques Schnier with female "Orient" model.
14. "The Peacemakers," by Esther, Helen, and Margaret Bruton.
15. Brents Carlton, "Polynesian Girl."
16. Adaline Kent, *Young Boy with Ukulele.*

artists created an aspect of refined primitivism; if you don't look too closely, you might think that the sculptures had just been unearthed from some archaeological dig. They were admired by public and art critics alike: Alfred Frankenstein, venerable art critic of the San Francisco Chronicle, considered them to be the finest sculpture made for the fair.

Sculpture for world's fairs is usually made of plaster, which will disintegrate within a few years. But the Pacific Unity sculptures, made of cast stone, were meant to last.

10. Helen Phillips, "Blowing a Horn."

ART SCANDAL ON TREASURE ISLAND

"Mr. Connick's a Fuddy Duddy, Artists Charge," read the headline in the San Francisco News. Harris Connick, the GGIE's general manager, previewed the sculpture shortly before the fair was to open, and he didn't like what he saw— especially the nudity. But it wasn't just the nudity of the Pacific Unity sculptures that bothered him: it was their "modernism," their "odd and "impressionistic" postures.

Local newspapers as well as national magazines publicized the debate between the artists and the management. According to Time magazine, Connick remarked that Cecilia Graham's *Woman Grinding Farina* should be called "Woman Bet-Loser Shoving a Peanut with her Nose." Adaline Kent, provoked by Connick's comment that she had fashioned a girl tickling her own foot, shot back: "The girl was merely holding her ankle, a perfectly natural pose. I got the idea from my little daughter." The artists maintained that their sculptures, like the two bridges that the fair was supposed to commemorate, symbolized "cleanness and strength."



29. A group of GGIE veterans gathers for a reunion in the Court of Pacifica, 1950. Foreground: Adaline Kent's *Polynesian Girl* tickles her foot.

17. Cecilia Graham, *"Primitive Woman Making Farina."*

In spite of Connick's lack of enthusiasm for the sculpture, the careers of many successful artists began on Treasure Island.

MAKING THE FOUNTAIN

The Pacific Basin Fountain was made by Gladding McBean and Company, in Lincoln, California, the premier American manufacturer of sculptural terra cotta for more than a hundred years. Never had so large a relief map been made in so exacting or lasting a medium as terra cotta. The map itself consisted of 361 individual tiles, weighed approximately 30 tons, and required nearly a year of work by dozens of artisans. The map tiles had to reflect the geography of the Pacific accurately, and fit together perfectly after they were glazed and fired. The map is meticulously detailed, from the networks of rivers coursing across the land masses to the ocean's deep trenches, slopes, and continental shelves. In spite of many delays and errors (one tile was cast upside down), the map was completed and installed in Pacific House just in time for the opening of the fair on February 18, 1939.



19. *The Pacific Basin Fountain, 1990.*

In the end, everyone who worked on this monumental project was satisfied. Philip Youtz, Director of Pacific House, wrote in a letter to Atholl McBean, President of Gladding McBean: "This fountain will be one of the most beautiful and educational features of the entire exposition. As far as I know, this is the first time that terra cotta has been used for such a piece' of sculpture, and the successful completion of this project will therefore make art history." And when the fair ended, art critic Alfred Frankenstein wrote that "no greater gift" could come from the fair than permanent display of the fountain and the other Pacific House maps. There is still nothing quite like it anywhere in the world.



21. *The Pacific Basin Fountain, viewed from the balcony in Pacific House.*

THE MAP OF THE PACIFIC

Setting out to design a map for the Pacific Basin Fountain, the staff geographers of Pacific House made a surprising discovery: professional maps rarely showed the Pacific in its entirety.⁴ On world maps, Europe was typically at the center, and the Pacific Ocean, divided into eastern and western parts, was relegated to the margins.



22. *The Pacific Basin Fountain, overhead view.*

And so Carl Sauer, a geographer and anthropologist, designed a map in which the Pacific itself is at center stage, sprinkled with islands and encircled by continents – the Pacific Rim. The map designed for the fountain presented a new image for the Pacific: the Americas, Asia, Australia, and the islands are neighbors sharing the same vast resource, the Pacific Ocean.



**ANTONIO
SOTOMAYOR**

The chief designer of the Pacific Basin Fountain was Bolivian-born Antonio Sotomayor, who came to San Francisco in 1923. Sotomayor quickly

made a name for himself in San Francisco with the whimsical and sometimes surreal style of his paintings and caricatures. The Pacific Basin Fountain was something of a departure for him.

Nevertheless, Sotomayor's playful style asserted itself. On the coping wall, at each of the four compass points, was an animal figure. The polar bear at the North Pole reared like a heraldic lion; the penguin at the South Pole waved its flippers proudly. At the west was a water buffalo, representing India; adjacent to South America, a llama represented Sotomayor's own place of birth.



The spouting whales at the fountain's center were anatomically incorrect: their flukes were vertical, like fish tails. Sotomayor's widow, Grace, declares that these whales, with their fierce grins and disoriented flukes, were "the real Soto."

In 1984, Sotomayor reflected that the Pacific Basin Fountain was the greatest challenge of his career - which lasted for six decades, and included murals for San Francisco cathedrals and hotels, theatrical designs, and hundreds of pastels and oil paintings. Sotomayor's life and art have left a permanent stamp on his adopted city, and when he died in 1985, the San Francisco Chronicle named him the city's artist laureate.

After the Fair is Over

Let's Go to the Fair!

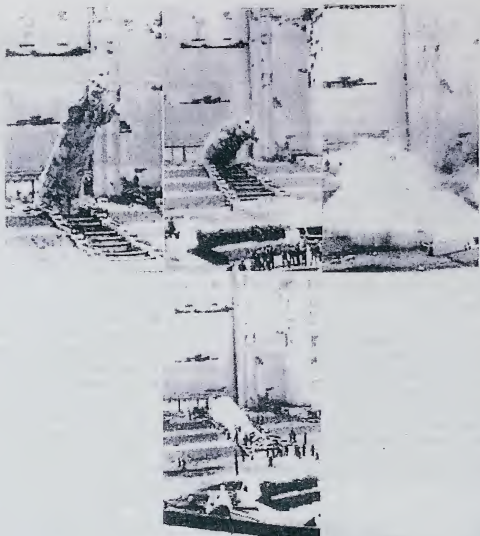
TREASURE ISLAND CLOSSES FOREVER SEPT. 29!

24. A colorful advertisement invites visitors to make one last trip to Treasure Island before it closes on September 29, 1940.

As the GGIE drew to a close in 1940, plans were made to retain some remnants of the fair permanently on Treasure Island, so that the Pageant of the Pacific would not be forgotten. The fountain was the top candidate for such an honor. Its proposed new location was the entrance to the Administration Building, a curving Streamline Modern structure and one of the fair's few permanent buildings. The Administration Building was to become the terminal for the new trans-Pacific airport. What could be a better ornament for the building than a decorative, colorful fountain representing the Pacific Basin? But as the final days of the pageant of Pacific unity approached, America was already heading towards war with Japan. Plans for the airport were postponed and early in 1941, the Navy borrowed Treasure Island temporarily to use for war preparations. The island became a major receiving station for the Navy and Marines in the Pacific during World War II.

By 1943, the Navy had decided that it wanted to stay on Treasure Island permanently. After a brief political skirmish with San Francisco Mayor Angelo Rossi and the Board of Supervisors, the Navy took permanent possession of the island. In exchange, the city of San Francisco received the land that was to become San Francisco International Airport.⁵

By the time the dust had cleared after World War II, many of the temporary world's fair buildings had been demolished, and serviceable, permanent new Navy buildings had risen in the midst of the fair's exotic ruins. Pacific House and most of the Court of Pacifica had been demolished in the early 1940s.



25-28. Pacifica, demolished on January 22, 1941.

But the Pacific Basin Fountain was salvaged and moved from Pacific House to the Court of Pacifica, where it was installed in the former location of the Fountain of Western Waters. The sculptures remained in the court, with the terra cotta fountain at their center. The Navy diverted a street around the court, landscaped it, and installed a sign explaining its origin. The little garden devoted to the GGIE's Pacific Basin art was known as the Circle, and it was the prettiest – and most unusual – garden spot on the base. For almost thirty years the garden and the works of art were carefully maintained, and the Circle remained a picturesque spot for picnics and photographs.

But by the late 1960s, the garden had fallen on hard times. The fountain and the statues fell prey to vandals and rock-throwing children. The spouting whales disappeared from the fountain, and its decorative coping tiles were stolen. The lawn went to seed, weeds grew in the fountain, and the trees became wildly overgrown.



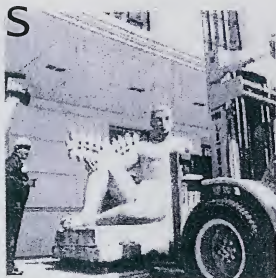
17. Cecilia Graham, "Primitive Woman Making Farina."

In 1975, a museum was founded on Treasure Island, housed in the building intended to be the terminal for Treasure Island Airport. The museum is dedicated primarily to the history of the American sea services in the Pacific. But as the museum grew, its exhibits were expanded to include the story of Treasure Island itself, the China Clippers, and the Golden Gate International Exposition. The fountain and the sculptures are the property of the United States Navy. But as the custodian of the island's history, the Treasure Island Museum was given the responsibility of coordinating their care and preservation.



30. The Administration Building, 1939 – future terminal for Treasure Island Airport and home of the Treasure Island Museum.

"Save the Fountain!"



31. In August, 1990, six of the sculptures were moved to a temporary new location at the entrance to the Treasure Island Museum.

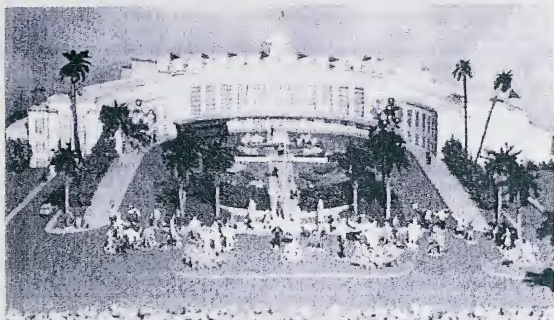
Since 1941, interest in the fountain and the sculptures has waxed and waned. Personnel are usually stationed on Treasure Island for a few months, or a few years. Many individuals contributed to the survival and maintenance of the works of art and then moved on.

But the fate of the sculptures and the fountain entered a new phase in 1975, when the Treasure Island Museum was founded. Walter Morris and Bob Geiser, two men stationed on the base, initiated a campaign to restore the fountain and the surrounding garden. They pulled weeds and cleaned tiles, raised money, made "Save the Fountain" tee-shirts, and attracted the attention of the local press. They interviewed artists and investigated the history of the works of art. Morris and Geiser have since left Treasure Island, but they sparked a legacy: out of their enthusiasm grew an ambitious plan to move the statues and the fountain to a permanent, public location on the base, at the entrance to the building that now houses the Treasure Island Museum - the location proposed for the fountain back in 1940.

In 1988, the Navy/Marine Corps/Coast Guard Museum Association established the Fiftieth Anniversary Art Treasures Restoration Project. The goal of the project is to restore the Pacific Basin Fountain and the Pacific Unity sculptures, and to display them permanently in a new garden setting at the front of the museum building. The project has moved forward steadily, in spite of wars, earthquakes and threats of base closures.

In 1989, the year of its golden anniversary, the GGIE received wide recognition, and Treasure Island was designated as a California State Historical Landmark. The Art Treasures Restoration Project commemorates the GGIE, which, in the words of the State Landmark plaque, "celebrated the ascendancy of San Francisco and California as economic, political and cultural forces in the increasingly important Pacific region." Equally important, the project celebrates the work of many fine artists who gave the GGIE a style and a vitality all its own.

Like Bernard Maybeck's renovated Palace of Fine Arts, which rises out of its lovely gardens as a permanent keepsake of the Panama Pacific International Exposition of 1915, the sculpture garden on Treasure Island will become a permanent symbol of a visionary moment in San Francisco history. With its dramatic view of the Bay, the Golden Gate Bridge, and San Francisco, the garden will make the exposition's legacy accessible to all who visit Treasure Island, and bring the GGIE's poignant vision of Pacific unity back to the public.



32. Architectural model of museum building and future world's fair sculpture garden.

ENDNOTES

1. "Golden Gate International Exposition on San Francisco Bay," promotional booklet published by San Francisco Bay Exposition Company, 1938.
2. According to a publicity booklet published in 1938 by the fair's promotion department.
3. The press and the fair's promotion department gave the sculptures many titles sometimes descriptive, sometimes romantic, sometimes hilarious. The titles here are taken directly from the GGIE's Official Guidebook of .1 1939., page 3 1.
4. Bulletin of the American Ceramic Society, February, 1939, page 62. Courtesy Joseph A. Taylor, Tile Heritage Foundation.
5. See Lt.Cmdr.Marcus Aurelius Arnheiter, USN, The Navy In San Francisco Bay: a Current History of Yerba Buena and Treasure Island (submitted for publication to the U.S. Naval Institute c.1970) for discussion and documentation of the property dispute.

SOURCES

Helen Phillips; Mrs. Antonio Sotomayor; Archives of American Art; Gladding, McBean and Company; Bill Wyatt, Lamar Schuler; The Masthead, Naval Station Treasure Island; Anne Bremer Memorial Library, The San Francisco Art Institute; San Francisco Chronicle; San Francisco Examiner, San Francisco News; Bancroft Library, University of California, Berkeley; Green Library, Stanford University; The Tile Heritage Foundation; The Treasure Island Museum, archives; University Research Library, University of California at Los Angeles; World's Fair Archives and Research Center, San Francisco.

BIBLIOGRAPHY

Lt.Cmdr.Marcus Aurelius Arnheiter, USN, The Navy In San Francisco Bay: a Current History of Yerba Buena and Treasure Island (submitted for publication to the U.S. Naval Institute c.1970).

Jack James and Earl Weller; Treasure Island: The Magic City, 1939-1940: The Story of the Golden Gate International Exposition (San Francisco, Pisani Printing and Publishing Co., 1941).

Juliet James, The Meaning of the Courts of the Golden Gate International Exposition (Berkeley: University of California Press, 1939).

Eugen Neuhaus, The Art of Treasure Island (Berkeley & Cambridge: University of California Press, 1939). Official Guidebook, 1939, Golden Gate International Exposition (San Francisco Bay Exposition Company, 1939).

Richard Reinhardt, Treasure Island 1939-1940: The Exposition Years (San Francisco: Scrimshaw Press, 1973. Rpt. Mill Valley: Squarebooks, 1973).

Production of this booklet was made possible by a generous grant from the Tile Heritage Foundation. Additional costs were underwritten by Donna Blacker, Lyle Bramson, Glenna Breslin, Katherine Caldwell, Robert Gorsch, Michael Gray, Donald Macky, and C. Michael Schnobelen.

ACKNOWLEDGEMENTS

MANY THANKS to Douglas Brookes, Phyllis Chaix, and Edward Von der Porten, Treasure Island Museum; Laurie Gordon; Michael Gray; Jeffery Gunderson, Librarian, San Francisco Art Institute; Judith Rubin, World's Fair quarterly; and unending gratitude to my family, to Robert Gorsch, and to Belle and Chester for many years of faithful support.

AND TO the Art Deco Society of California; Marian Brackenridge; Lulu Hawkins Braghetta; Gray Brechin; Glenna Breslin; Katherine Caldwell; Carrie Carlton; Gladding, McBean (Bill Wyatt, Lamar Schuler); Galen Hilgard; Randolph Jones and Eugene Kaeck; Consuelo Cheever Julian; Debra Lehane, San Francisco Arts Commission; Edith Liu; John Lucas; Donald Macky; Tom Moulin and Moulin Studios; Helen Phillips; Richard Reinhardt; David Slivka; Grace Sotomayor; Peter and Hebe Stackpole; Joseph A. Taylor, Tile Heritage Foundation; Hermann and Friedel Volz; World's Fairquarterly; Masha Zakheim; and to many other individuals who have opened their scrapbooks, their memories, and their hearts.

PHOTO CREDITS

Cover: Moulin Studios. 1: Architect and Engineer, February 1939. 2. United States Navy photograph. Page Three: FDR signature from "Golden Gate International Exposition on San Francisco Bay," San Francisco Bay Exposition Company, 1938. 3. Documents Collection, Environmental Design Library, University of California, Berkeley. 4. Highlights, November 1938. 5. Highlights, February-March 1938. 6. DeLuxe. 7. Photographer unknown, photograph from the artist's collection. 8. Grau, AS. 9. Magic, photo uncredited. 10. Grau, AS. 11. Grau, AS. 12. Photo uncredited, AS. 13. Grau, AS. 14. DeLuxe. 15. DeLuxe. 16. DeLuxe. 17. Photographer and source unknown, AS. 18. Magic. 19. Katy Raddatz. 20. Photographer unknown, courtesy Mrs. Edith Liu. 21. Chronicle. 22. Roberts and Roberts, courtesy Mrs. Grace Sotomayor. 23. Grau, AS. 24. Author's collection. 25-8. Photographer unknown, courtesy Patricia Forum, June, 1939, courtesy San Francisco Art Institute Library. 31. Nick Chase, Morale, Welfare and Recreation, Naval Station Treasure Island. 32. Laurie Gordon.

Key: AS: from the author's collection.
Chronicle: San Francisco Chronicle.
DeLuxe: "Pageant of the Pacific Official DeLuxe Views," 1940.
Photographers: H. George Grau, Gabriel Moulin, Roberts & Roberts, Walter Boychuck.
Grau: H. George Grau.
Highlights: "World's Fair Highlights," published by San Francisco Bay Exposition Co.
Magic: Treasure Island, The Magic City, 1939-1940: The Story of the



Golden Gate International Exposition by Jack James and Earle Weller (San Francisco, Pisaní Printing and Publishing, 1940).

Text and design by Anne Schnobelen. Typesetting and layout by the Scriptorium, Berkeley, California. © 1991 GGIE Research Associates, Berkeley, California. All rights reserved. Reproduction of the contents in

any form, either in whole or in part, is strictly prohibited without written permission from the publisher, except for brief quotations citing this work as the source.

Published by GGIE Research Associates, Berkeley, California. Internet version published, with permission, by Treasure Island Museum Association, 2003.

Anne Schnobelen is a writer and historian with a special interest in Treasure Island's artistic and architectural heritage. She lives in Berkeley, California.

Photo: Laurie Gordon



Events

- 3 p.m. – 7:30 p.m. Chicken Hooray! Serving fresh, hot chicken in the Chapel Parking lot. Please look for the red and silver service truck.
- 5 p.m. – 6 p.m. Pilates. Ongoing FREE class at the YMCA
- 7 p.m. – 8 p.m. AA & NA Meetings in the ShipShape Building. Both AA and NA meetings are held simultaneously from 7pm to 8:30 on Tuesdays at the ShipShape Building. They are open to any and all recovering persons.
- 6 p.m. – 7 p.m. Pilates. Ongoing FREE class at the YMCA
- 6:30 p.m. – 7:30 p.m. Hip-Hop Lessons. Ongoing FREE class at the YMCA
- 11:30 a.m. – 1:30 p.m. Indoor Hurling. Ongoing FREE class at the YMCA
-

TIDA Board Meeting Treasure Island Development Authority Meeting, 2nd Wed of each month unless otherwise specified. 1:30 p.m. unless otherwise specified. San Francisco City Hall, Room 400. E-mail TIDA@sfgov.org for more information

8 p.m. Treasure Island Parent/Youth Committee Meeting in the Boys and Girls club (see Map) Moderated by Good Neighbors of Treasure Island to all residents on the Island.

8 p.m. Island (Crime) Watch Call (415) 520-6653 for location

5 p.m. FOTEP Car Wash Location to be announced

2 p.m. Glide Grand Opening Event and Graduation Ceremony. Held at the Treasure Island Elementary School Building

Community Meeting Scheduled Has Changed

Effective starting in April, the community meeting will now take place every two months.

When: 3rd Wednesday of every other month

Months June, August, October, December

Time: 6:30—8 pm

Where: The ShipShape Building

May 2008

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5 Chicken Hooray!	6 AA/NA Meeting! 7 pm — 8 pm	7	8 Parents and Youth Committee	9	10 Fireworks 9:00 pm—9:20 pm
11	12	13	14 TIDA Meeting 2:00 pm Fireworks 9:00 pm	15	16	17 FOTEP Car Wash 10 am— 5 pm
18	19 Chicken Hooray!	20 AA/NA Meeting! 7 pm — 8 pm	21 Island Watch Meeting	22	23 Glide Grand Open- ing and Graduation	24
25	26 Chicken Hooray!	27 AA/NA Meeting! 7 pm — 8 pm	28			

You can get reminders for most events by joining www.treasureislandonline.net, and using the online calendar.

Deadline for April calendar: 3/15

TREASURE ISLAND EXPO!!!



BOUNCE HOUSE

FREE DRINKS

FINANCIAL FAIR
SATURDAY, JUNE 7TH

11 to 2 pm

avenue B and 12th street

BE THERE FOR SOME FUN

Organized by TIHDI
contact: 415 986 4810, sherrylmorris@tihdi.org, palak@tihdi.org

TREASURE ISLAND YMCA
402 AVENUE M at 10TH STREET
415-765-9036

Hours of Operation

Monday – Friday 1 pm – 9 pm Saturday & Sunday 12 pm – 5 pm

We currently offer the following activities:

Pilates

Tuesday & Wednesday 6 pm – 7 pm (Wellness Studio 1)

Hip-Hop/Dance

Friday 6:30 pm – 7:30 pm (Wellness Studio 2)

Alleyboyz (Youth Basketball Skills Training)

Saturday 11 am – 1 pm

Youth Basketball

Tuesday, Wednesday & Thursday 6 pm – 8 pm (call for details)

Open Court Times

Monday	All courts	1 pm – 6 pm
Tuesday	Court 1	1 pm – 9 pm
	Court 2	1 pm – 9 pm
	Court 3	3 pm – 4 pm 5 pm – 6 pm
Wednesday	Court 1	2 pm – 9 pm
	Court 2	1 pm – 9 pm
	Court 3	1 pm – 6 pm
Thursday	Court 1	1 pm – 9 pm
	Court 2	1 pm – 9 pm
	Court 3	1 pm – 6 pm
Friday	Court 1	3 pm – 9 pm
	Court 2	1 pm – 4 pm 5 pm – 9 pm
	Court 3	1 pm – 4 pm 5 pm – 9 pm
Saturday	Court 1	1 pm – 5 pm
	Court 2	12 pm – 5 pm
	Court 3	12 pm – 5 pm
Sunday	All Courts	12 pm – 5 pm

We also have a weight room, cardio room and 2 racquetball courts. We have equipment that can be checked out to members. All members under the age of 10 years old must be accompanied by a parent or guardian while they are in our facilities. No children under the age of 10 years old are permitted in the weight room or cardio room.

If you have any questions please feel free to contact:
Neal Sedgwick – Treasure Island YMCA Facility Coordinator
ksedgwick@ymcasf.org
415-765-9037

Money Management Workshop

Come and hear from banking experts on how to better
manage your resources through

Banking & Budgeting

Date: Wednesday, May 21, 2008

Time: 6:00 pm – 8:00 pm

Location: Ship Shape Building

Free Drawings!!!

4 \$50

drawings. Must be
present to win.

COME TALK
TO A CREDIT
UNION RIGHT
HERE ON THE
ISLAND !!!

Organized by
Bank on SF, Mission Federal Credit Union and
TIHDI

Light Refreshment will be served

Organized by Treasure Island Homeless Development Initiative,
Questions? 415 986 4810 sherrylmorris@tihdi.org, palak@tihdi.org

BUSINESS ASSISTANCE CENTER

@ SHIPSHAPE

**FREE EVENT- OPEN HOUSE
1 TO 4 PM, MAY 6TH @ shipshape
TUESDAY!
ALL WELCOME**

**CHECK OUT OUR CENTER RIGHT
HERE AT THE SHIPSHAPE**

**HELP YOURSELF TO SOME LIGHT
REFRESHMENTS**

Organized by TIHDI, please call 415 986 4810 or email
sherrylmorris@tihdi.org, palak@tihdi.org



New Athletic Fields Coming to Treasure Island

As many of you have noticed, Treasure Island is in the process of getting three new athletic fields. One field is on California Avenue and Avenue H, and the other two fields are between Avenues E and I and 13th and 11th Streets.

Heavy construction is expected to continue until May 24th, 2008. The Fields are not expected to be used for athletics until late fall.

Along with the fields, an over-flow parking area will be created in the residential area.

For more information contact Marianne Thompson at (415) 274-0662

Or Marianne.Thompson@sfgov.org.

CAR WASH

SATURDAY

MAY 17th 10am to 5pm

180 CALIFORNIA AVE.
TREASURE ISLAND

Behind the SFFD building across from the job corps building.
Follow the car wash signs

Cars \$ 5.00 Trucks, Vans and SUV's \$8.00

Proceeds will go to the F.O.T.E.P. unity day fund

FEMALE OFFENDER TREATMENT EMPLOYMENT PROGRAM



Important Notice

TREASURE ISLAND DEVELOPMENT AUTHORITY



This will be the last paper edition of this calendar to be sent directly to your home. Starting in June, the John Stewart Company will be sending out the monthly calendar electronically. If you wish to continue receiving this calendar, please email Loraine Lee at LorraineLee@jsco.net.

Moving forward, the Treasure Island Development Authority in partnership with the John Stewart Company will be emailing notices directly to our residents in an effort to communicate in a more timely and efficient manner.

If you are unable to receive a copy electronically, please call Marianne Thompson at 415-274-0662 and leave your name and complete mailing address. For other concerns, email her at Marianne.Thompson@sfgov.org.



TREASURE ISLAND
DEVELOPMENT
AUTHORITY

Building One
410 Avenue of the Palms
San Francisco, CA 94130

Phone: 415-274-0660
Fax: 415-274-0299
E-mail: TIDA@sfgov.org

If you wish to receive notices and community information electronically, please e-mail Marianne.Thompson@sfgov.org.

Mirian Saez,
Director of Island
Operations

CARROLL



Important Numbers to Have

Emergency:
911 for Cell Phones:
Non-Emergency Police Call

Leasing Office

- Maintenance
- Emergency After Hours

Comcast

Good Neighbors (Community Group)

Mum/511.Org

Neighborhood Watch

Treasure Island Development Authority

SBC/AT&T

SFICA - Community Association

SF Unified School District

San Francisco Supervisor Chris Daly

Treasure Island Creative Network

Treasure Island Development Authority

Treasure Island Homeless Dev. Initiative

Dial 911

415-553-8090

415-553-0123

(415) 834-0211

(415) 834-0211

(415) 445-2184

(800) 266-2278

(415) 520-6653

Dial 511

(415) 738-8773

(415) 274-0660

(800) 310-2355

eraport@aol.com

(415) 242-2600

(415) 554-7970

(415) 274-0311

ext. 301

(415) 274-0660

(415) 274-0311

Island Related Websites

www.sfgov.org/Treasureisland

www.TIHDI.org

www.TreasureislandOnline.net

www.94130.com

(TI Development Authority)

(TI Homeless Dev. Initiative)

(Community Resources/News)

(Online community)

Recreation

TI Sailing Center

Golden Gate Rugby

SF Stars Netball

YMCA Gym

Marina

Yacht Club

SF Little League

(415) 421-2225

(415) 335-3079

(415) 259-8489

(415) 765-9037

(415) 981-2416

(415) 434 4475

(415) 263-0510

www.tisailing.org

www.sfgfrc.com

www.starsnetball.com

www.treasure-isle.com

www.tiyc.org/

www.sfil.org

Youth

Kidango

SF Boys & Girls Club

www.kidango.org

www.bgcsf.org

(415) 834-0602

(415) 362-9037

Stores

Treasure Island Mini-Market 7 a.m. to 8 p.m., Saturday & Sunday

10 a.m. to 7 p.m.

Treasure Island Photo Booth Treasure Island front gate. Hours are

variable.

Fresh Food

Chicken Hoory! The Chicken Hoory! Truck will serve fresh, hot chicken every Monday in the Chapel Parking Lot. Please look for the red and silver checkered rotisserie truck. Hours of Operation: 3:00 PM to 7:30 PM

Restaurant

Cook's Cafe Treasure Island Marina parking lot, outside the Treasure Island front gate. Hours of operation: Tuesday through Friday: 7 a.m. to 3 p.m. AND 5 p.m. to 8:30 p.m. Saturdays from 7 a.m. to 2 p.m. AND 5 p.m. to 9 p.m. Open Sundays for Brunch. From 10 a.m. to 3 p.m. *Take-out Available. Call 415-705-1860.*

Job Corps Advanced Culinary Academy Fine Dining Restaurant Job Corps - Building 368, 9th Street and Avenue C. Hours of operation: Tuesday through Thursday: 12 noon to 1 p.m. *Reservations required. Please call (415) 277-2301*

Delivery to the Islands

SAFEMAY DELIVERY

Planet Organics

Chinese Food Mae Lee

Gino's Pizza

Pizza Lover

Town Pizza

(800) 956-5855

(415) 242-1006

(415) 922-0202

(415) 437-9400

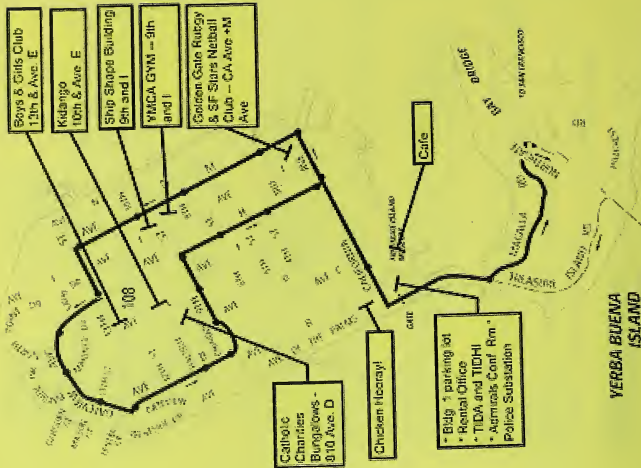
(415) 551-2524

www.safeway.com

www.planetorganics.com



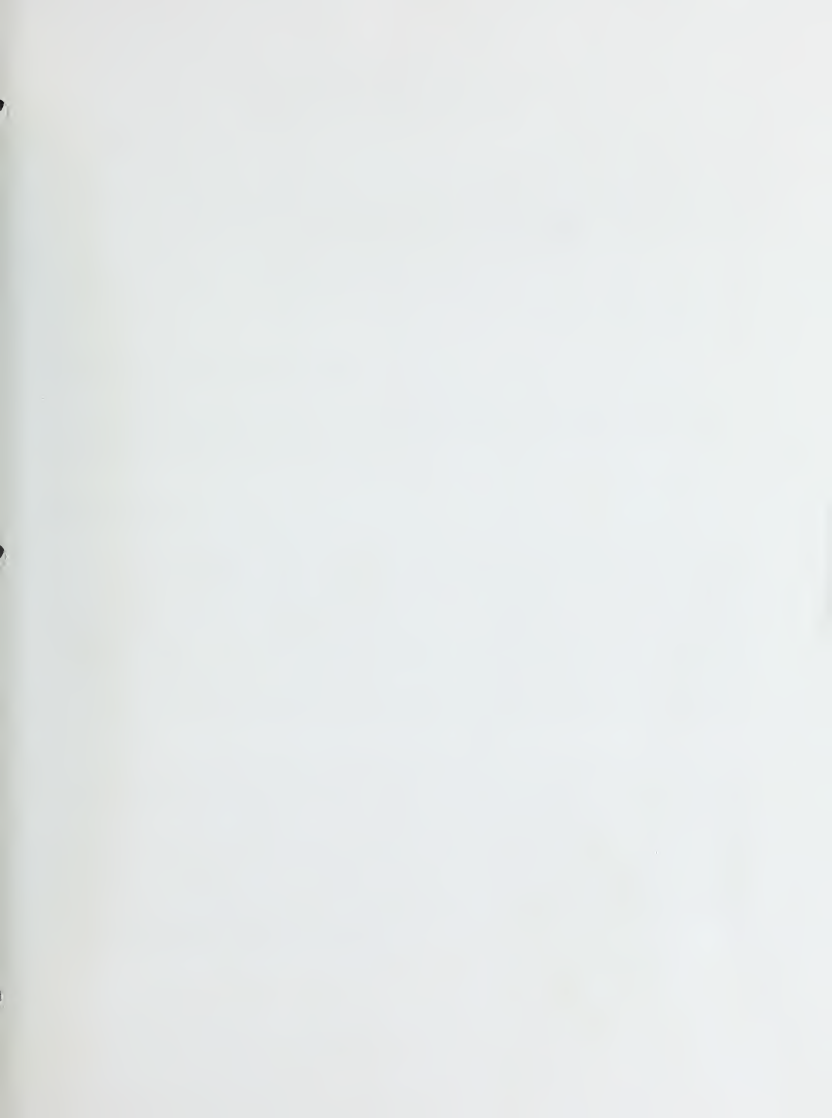
Mayor Gavin Newsom
 Claudine Cheng, President, Treasure Island
 Development Authority
 Mirian Saez, Director of Island Operations



This calendar was produced with the assistance of Good Neighbors of Treasure Island/Yerba Buena Island, a community group







AGENDA ITEM 8B
Treasure Island Development Authority
City and County of San Francisco
May 14, 2008

Subject: Resolution Authorizing an Amendment to the Contract with Geomatrix Consultants, Inc. to Extend the Term Through June 30, 2009 and Increase the Contract by an Amount of \$180,000 for a Not to Exceed Amount of \$1,439,000 for Environmental Consulting Services (Action Item)

Contact: Michael Tymoff, Office of Joint Development

SUMMARY OF PROPOSED ACTION

Authorizing a Sixth Amendment to the contract with Geomatrix Consultants, Inc. extending the term of the contract for an additional 12 months and increasing the budget by \$180,000 for an additional year of Task A scope of services.

BACKGROUND

Geomatrix Consultants, Inc. (Geomatrix) was initially selected by the Department of Public Works (DPW) through a public Request for Proposals process as part of a pool of "as needed" consultants to provide environmental review and remediation activities. On February 12, 2003, the Authority authorized execution of a contract for a not-to-exceed amount of \$541,000 to provide technical services related to monitoring the Navy's environmental remediation activities at Treasure Island. The contract was first amended in July 2004 to extend the term through August 31, 2004. Between December 2004 and July 2007 the Authority approved Second, Third, Fourth and Fifth contract amendments, extending the term through June 30, 2008 and augmenting the budget consistent with additional years of scope to a total not-to-exceed amount of \$1,259,000.

At a February 22, 2006 meeting staff requested direction from the TIDA Board regarding the need for the environmental engineering services, currently provided by Geomatrix, going forward. Staff indicated that there were two primary options for contracting for the necessary services: (1) to rely on the prior competitive solicitation in which Geomatrix was selected and amend the existing contract, understanding that this would require approval of the contract from the Board of Supervisors who are required to approve TIDA contracts of more than \$1,000,000; or (2) initiate a re-bid of the contract process by issuing a Request for Proposals and engaging in a new competitive solicitation process. The TIDA Board directed staff to continue to contract with Geomatrix based on the following factors:

- The importance of maintaining continuity of oversight of the Navy's environmental program;
- A high level of satisfaction with the services being provided by Geomatrix and the established relationships Geomatrix has with the Navy and local, state and federal regulatory agencies;
- The potential problems associated with the learning curve that would be inherent with bringing a new engineering team up to speed; and,
- The understanding that there will be a more logical point at a later stage of the project in which to engage in a subsequent competitive selection process for continued environmental engineering services.

These factors remain the same for FY 2008-2009. Exhibit A contains the contract amendment consistent with this direction.

Scope of Services

The scope of work for the Geomatrix contract consists of (i) oversight of the Navy's remediation program, and (ii) helping in the selection of a guaranteed fixed-price environmental engineering and remediation contractor and assisting the Authority in ensuring that a guaranteed fixed price contract (GFP contract) adequately protects TIDA and supports the redevelopment plans. The two primary components of the Geomatrix scope of work are summarized here and are outlined in more detail in Exhibit A.

Task A. TIDA Oversight of Navy Clean-up Program. As part of its transfer responsibilities, and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Navy has been undertaking an environmental remediation program to meet federal and state requirements for transferring the base to the Authority in an environmental condition to support the Authority's redevelopment plans. The ultimate goal of the Navy's work is to issue a Finding of Suitability to Transfer (FOST) which would state that the property could be transferred and reused for the intended purposes. One of the Authority's primary responsibilities is to closely monitor the Navy's environmental remediation activities to ensure that the Navy achieves the appropriate clean-up levels for planned civilian use. The Geomatrix scope of work regarding this process is as follows:

- Attend and prepare information for monthly technical meetings that are held to review the status of on-going tasks and identify outstanding issues. **ONGOING**
- Attend and prepare information for additional technical meetings to address significant issues identified at the monthly meeting. **ONGOING**
- Attend and prepare materials for other supplemental meetings associated with risk communication and technical presentations to Authority management, regulators, and tenants. **ONGOING**
- Review Navy work plans and reports which document their approach, confirm agreements between interested parties, and comply with regulatory requirements. **ONGOING**

- At the Authority's request, oversee the Navy's field work or collect field samples to verify the adequacy of the Navy's work, or to fill a data gap critical to the Authority's needs that is not addressed by the Navy. **ONGOING**

Task B. Assistance with Negotiating a GFP Contract as Part of Early Transfer Negotiations.

The Authority has been in discussions with the Navy in pursuit of an Early Transfer for former NSTI. Initially, TIDA intended to enter directly into the GFP contract with the selected contractor. The first step in this process was the issuance of a request for qualifications (RFQ) and selection of an environmental engineering and remediation contractor (CH2M Hill) to complete the cleanup under a fixed price contract. On June 13, 2007, TIDA terminated the contract with CH2M Hill with the expectation that TIDCD will hire an environmental engineering firm to assist in the negotiations with the Navy. Geomatrix will play the same role as previously envisioned by peer reviewing Early Transfer and remediation contract agreements, and representing the interests of the Authority. Geomatrix's remaining scope of work for this task consists of the following:

- Provide technical support to the Authority throughout the process of TIDCD negotiating a GFP contract, including peer review of documents and work products prepared by the selected TIDCD contractor. Within this context, Geomatrix will review technical documents related to the GFP Contract, including the various legal documents necessary to complete an Early Transfer, to the extent the City determines that it needs such support from an independent consultant to assure that the remediation contract protects the interests of the City.
- Assist the Authority in preparing and presenting technical and financial information to the public and City officials to aid in the decision-making process; and attending technical and strategy meetings regarding the above.

PROPOSED CONTRACT AMENDMENT

Scope of Services and Budget. The scope of work will continue to consist of two distinct tasks and this amendment only modifies the scope of work for Task A. The property transfer and environmental remediation negotiations with the Navy have taken longer than initially projected in the Geomatrix scope of work and remain on-going. As a result, the \$908,900 budget for Task A as amended in July 2007 will be expended as of June 2008. The proposed amendment extends the time period under which Geomatrix's services will be performed, thereby increasing the amount of services necessary for Task A activities. Approximately \$15,000 per month (or \$180,000 per year) is necessary for Geomatrix to perform its Task A activities. This \$180,000 is the amount of this contract budget amendment increasing the Task A budget to \$1,088,900 and the total not-to-exceed amount of the contract to \$1,439,000. The contract will continue to be paid on a time and materials basis.

Term. The term of the amended contract will be extended through June 30, 2009.

Funds. The proposed modification augments the contract budget by \$180,000. These expenditures have been included in the redevelopment planning portion of the TIDA FY 2008-

2009 budget. The entire amount of the \$180,000 contract budget increase will be reimbursed by the prospective master developer, Treasure Island Community Development (TICD), under the terms of the Exclusive Negotiating Agreement between TIDA and TICD.

Board of Supervisors Approval. TIDA contracts in excess of \$1,000,000 or 10 years require approval by the San Francisco Board of Supervisors. Consequently, approval of this contract amendment by the TIDA Board will be subject to further approval by the Board of Supervisors.

RECOMMENDATION

Staff recommends approval of the amendment to the contract with Geomatrix based on the following factors:

1. The modification is consistent with the Authority's desire to continue to monitor the Navy's clean-up program to be consistent with civilian reuse of the property.
2. Maintaining continuity of this oversight at a key point in the Navy's clean up process merits amending the existing contract.
3. The contract modification does not change the fundamental scope of services outlined in the original contract.
4. The funds to pay for the modified contract budget are available via sources identified above.

EXHIBITS

- A. Sixth Amendment to Contract with Geomatrix.

1 **[Authorizing Amendment to Contract with Geomatrix Environmental Consultants]**
2 **Authorizing the Director of Island Operations to Execute an Amendment to the Contract**
3 **With Geomatrix Consultants, Inc. to Extend the Term through June 30, 2009, to Modify**
4 **the Scope of Services, and Increase the Contract by an Amount Not to Exceed \$180,000**
5 **for a new Total Amount Not to Exceed \$1,439,000 for Environmental Consulting**
6 **Services.**

7
8 WHEREAS, Former Naval Station Treasure Island is a military base located on
9 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by
10 the United States of America ("the Federal Government"); and,

11 WHEREAS, Treasure Island was selected for closure and disposition by the Base
12 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
13 subsequent amendments; and,

14 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
15 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
16 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
17 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
18 conversion of the Base for the public interest, convenience, welfare and common benefit of
19 the inhabitants of the City and County of San Francisco; and,

20 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended
21 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to
22 Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (1) designated the
23 Authority as a redevelopment agency under California redevelopment law with authority over
24 the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those
25

1 portions of the Base which are subject to Tidelands Trust, vested in the Authority the authority
2 to administer the public trust for commerce, navigation and fisheries as to such property; and,

3 WHEREAS, On October 17, 2005, the Board of Directors adopted Resolution No. 05-
4 039-10/12 designating the Office of Joint Development Division (formerly known as the Office
5 of Base Reuse and Real Estate Development Division) of the Office of Economic and
6 Workforce Development as the lead negotiator in all negotiations related to the overall
7 redevelopment and conversion of the Base to civilian uses, including without limitation,
8 negotiations regarding the terms and conditions for the long term redevelopment of the
9 Treasure Island Marina and the redevelopment of the Base; and,

10 WHEREAS, Geomatrix Consultants, Inc. ("Geomatrix") was selected by the City's
11 Department of Public Works as an "as-needed" contractor to provide environmental review
12 and remediation activities based on a public Request for Proposals process; and,

13 WHEREAS, Geomatrix performed services under a contract with DPW for several
14 agencies and locations, including Treasure Island; and,

15 WHEREAS, The Authority amended the contract from time to time to extend the term
16 and to directly contract with Geomatrix; and,

17 WHEREAS, On February 12, 2003, because of Geomatrix's knowledge of the Navy's
18 environmental remediation program at the Base, the Authority authorized the Executive
19 Director to execute a new contract with Geomatrix for an amount not to exceed \$541,000 to
20 assist the Authority in drafting a Request for Qualifications for a guaranteed fixed price
21 contractor and in evaluating bids and negotiating a contract with a guaranteed fixed price
22 contractor to participate in the negotiations with the Navy for an Environmental Services
23 Cooperative Agreement in connection with an Early Transfer of the Base and to monitor the
24 Navy's on-going environmental remediation program; and,

1 WHEREAS, On June 9, 2004, the Authority extended the term of the Geomatrix
2 contract for an additional two (2) months; and,

3 WHEREAS, On December 8, 2004, the Authority retroactively extended the term of the
4 contract through June 30, 2005 and increased the not-to-exceed amount of the Geomatrix
5 contract to \$719,000; and,

6 WHEREAS, On July 13, 2005, the Authority retroactively extended the term of the
7 Geomatrix contract through June 30, 2006 and increased the not-to-exceed amount of the
8 contract to \$899,000; and,

9 WHEREAS, On May 31, 2006, the Authority extended the term of the Geomatrix
10 contract through June 30, 2007 and increased the not-to-exceed amount of the contract to
11 \$1,097,000; and,

12 WHEREAS, On May 9, 2007, the Authority extended the term of the Geomatrix
13 contract through June 30, 2008 and increased the not-to-exceed amount of the contract to
14 \$1,277,000; and,

15 WHEREAS, The Authority believes that the on-going role of Geomatrix is important and
16 merits amendment of the existing contract in order to (a) maintain the continuity of oversight of
17 the Navy's environmental remediation program; (b) avoid the potential challenges associated
18 with the learning curve inherent in selecting and bringing a new engineering contractor up to
19 speed; and (c) continue to assist the Authority in ensuring that a guaranteed fixed price
20 contract adequately protects the Authority and supports the development plan; and,

21 WHEREAS, The Authority desires to amend the contract with Geomatrix to extend the
22 term, increase the not-to-exceed amount, and modify the scope of services of the contract,
23 consistent with the Authority's need for on-going monitoring of the Navy's environmental
24 cleanup program; now therefore be it
25

RESOLVED, That the Authority hereby authorizes the Director of Joint Development to execute the amendment to the contract with Geomatrix Consultants, Inc. to extend the term thereof through June 30, 2009, increase the not-to-exceed amount of the contract to \$1,439,000, and modify the scope of services, all in substantially the form attached hereto as Exhibit A.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on May 14, 2008.

ITEM 8B – EXHIBIT A
TREASURE ISLAND DEVELOPMENT AUTHORITY
CITY AND COUNTY OF SAN FRANCISCO
SIXTH AMENDMENT

THIS SIXTH AMENDMENT (this “Amendment”) is made as of July 1, 2008, in San Francisco, California, by and between Geomatrix Consultants, Inc. (“Contractor”), and the Treasure Island Development Authority, a California public benefit municipal corporation (“Authority”).

RECITALS

WHEREAS, Authority and Contractor have entered into the Agreement (as defined below); and

WHEREAS, Authority and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the Authority agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

(a) **Agreement.** The term “Agreement” shall mean the Agreement dated April 1, 2003 between Contractor and Authority, as amended by a First Amendment dated July 1, 2004, a Second Amendment dated November 10, 2004, a Third Amendment dated July 1, 2005, a Fourth Amendment dated July 1, 2006, and a Fifth Amendment dated July 1, 2007.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

(a) **Section 2, Term of the Agreement,** is hereby amended to read as follows:

Subject to Section 1, the term of this Agreement shall be from April 1, 2003 to June 30, 2009.

(b) **Appendix A, Services to be Provided by Contractor,** is hereby amended to read as follows:

Appendix A
Services to be Provided by Contractor

1. Description of Services for Environmental Consulting.

The City and County of San Francisco (City) established the Treasure Island Development Authority (Authority) to manage the conversion of former Naval Station Treasure Island from Navy use to civilian use. As part of its transfer responsibilities, and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Navy has been undertaking an environmental remediation program to meet federal and state requirements for transferring the base to the Authority in an environmental condition to support the Authority's redevelopment plans. The ultimate goal of the Navy's work is to issue a Finding of Suitability to Transfer (FOST)

ITEM 8B – EXHIBIT A

which would state that the property could be transferred and reused for the intended purposes. One of the Authority's primary responsibilities is to closely monitor the Navy's environmental remediation activities to assess whether the Navy achieves the appropriate clean-up levels for planned civilian use. For the past five years, the Authority has retained a consultant, Geomatrix, to provide independent analyses of the thoroughness and defensibility of the environmental work conducted by the Navy, and to assess the compatibility of the Navy's proposed remediation activities with the Authority's redevelopment plans.

Geomatrix was initially selected by the Department of Public Works (DPW) as an "as needed" consultant for environmental review and remediation activities through a public Request for Proposals process and performed services under contract with DPW from November 1998 through June 2001. Since June 2001, Geomatrix has been under a direct contract with the Authority. The firm's knowledge of the Navy's environmental remediation program for TI gained through its work for the Authority provides Geomatrix with a unique ability to provide the required services without duplicating previous expenditures.

For the environmental remediation program, Treasure Island and Yerba Buena Island were divided into 144 parcels (118 on TI and 26 on YBI) which were then classified by environmental condition to enable the Navy and the Authority to identify properties that are suitable for transfer. A Restoration Advisory Board (RAB) was established to provide public review, input and comment on all aspects of the environmental remediation program.

In early 2003, the Authority formally requested that the Navy commence negotiating an "Early Transfer" to the Authority pursuant to CERCLA. An Early Transfer would involve a "fence-to-fence" transfer of the entire base pursuant to (i) a FOST for all "clean" property and (ii) a Finding of Suitability for Early Transfer (FOSET) for all remaining property. Under CERCLA, a FOSET involves different documentation than a FOST. Other transfer documents will need to be drafted and negotiated. For example, the Authority will need to negotiate a mutually acceptable Environmental Services Cooperative Agreement (ESCA) with the Navy to provide for completion of environmental remediation.

Once the property is transferred, the Authority will conduct the cleanup. The Authority will issue a request for qualifications (RFQ) for a remediation contractor to complete the cleanup under a fixed price contract. In order to negotiate and enter a fixed price contract, the selected contractor will be a participant in the negotiations with the Navy and regulators.

The City requires environmental consulting services to assist in drafting the RFQ for the remediation contractor, evaluate the bids and negotiate a fixed-price remediation contract with the selected contractor (resulting in the selection of CH2M Hill). The environmental consultant will not be eligible to bid as the remediation contractor. Once the remediation contractor is selected, the scope of services of the environmental consultant will substantially decrease, but the consultant would continue to support the City in negotiations with the Navy and regulators and on technical issues.

- The early transfer process was expected to take up to 13 months to complete. Over the course of the negotiations, the Navy has changed its approach to considering an Early Transfer at NSTI. Consequently, the schedule for the work and the negotiations has been significantly extended, requiring additional work to what was originally anticipated. This additional work pertains to Geomatrix's work assisting the Authority in assuring that any environmental remediation contracts as part of the overall Early Transfer negotiations fully protect the Authority.

In the interim, the Navy has and will continue its current remediation program, and the Authority will continue to require the existing scope of services by the consultant to a limited extent.

The scope of work for consulting services to oversee the ongoing Navy remediation and for assistance with early transfer, including retaining a remediation contractor is described below. The proposed 6th Amendment to the contract will fund Geomatrix's work through June 2009.

ITEM 8B – EXHIBIT A

A. Description of Services for Oversight of Navy Remediation.

Monthly technical meetings are held to review the status of on-going tasks and identify outstanding issues. The Navy and its consultants, the Authority and its consultants, regulators, and RAB members participate in these meetings. Additional meetings are scheduled to address significant issues identified at the monthly meeting. These technical working meetings clarify details of a specific field program or technical evaluation approach. Other supplemental meetings may be associated with assisting the Authority with risk communication, including technical presentations to Authority management, regulators, and tenants. In addition, the Navy prepares work plans and reports to document its approach, confirm agreements between interested parties, and comply with regulatory requirements, which also are reviewed by the Authority's consultant. Finally, the Authority occasionally may request that its consultant observe the Navy's field work or collect field samples to verify the adequacy of the Navy's work, or to fill a data gap critical to the Authority's needs that is not addressed by the Navy.

The process for completing environmental investigations at NSTI is fairly well defined; however, regulators commonly identify the need for previously unplanned activities (additional investigations, reports and meetings) as new field data are collected and analyzed. Additional work plans and reports are then prepared that, in turn, require additional review and additional meetings to address technical issues.

Scope of Work for Task A

- Task A.1: Regularly scheduled BRAC Closure Team meetings (preparation, meeting attendance, documentation of meeting). Estimate = 67 meetings in San Francisco and 8 meetings in San Diego.
- Task A.2: Supplemental technical meetings including conference calls (preparation, meeting attendance, documentation of meeting). Estimate = 50 meetings and 22 conference calls.
- Task A.3: Review of technical documents including reports and work plans. Estimate 205 documents.
- Task A.4: Interim data review and preparation of written summary. Estimate = 26 data sets.
- Task A.5: Oversight of fieldwork including collections of split samples to assess data quality. Estimate = 4 assessments of fieldwork.
- Task A.6: Additional consultation (at request of Authority) and contingency. The Authority must preauthorize activities under this Task in writing.

B. Description of Services for Assistance with Early Transfer.

Early transfer will require an additional and separate scope of work. Initially, TIDA intended to enter directly into the GFP contract with the selected contractor. The first step in this process was the issuance of a request for qualifications (RFQ) and selection of an environmental engineering and remediation contractor (CH2M Hill) to complete the cleanup under a guaranteed fixed price contract. On June 13, 2007, TIDA terminated the contract with CH2M Hill with the expectation that TICD will hire an environmental engineering firm to assist in the negotiations with the Navy. Geomatrix will play the same role as previously envisioned by peer reviewing Early Transfer and remediation contract agreements, and representing the interests of the City and the Authority. Geomatrix's scope of work will not include duplication of any services being provided by the TICD selected GFP Contractor. Geomatrix's remaining scope of work for this task consists of the following:

1. Providing technical support to the Authority throughout the process of TICD negotiating a GFP contract;
2. Peer reviewing technical documents and work products prepared by the selected TICD contractor, including the various legal documents necessary to complete an Early Transfer, to the extent the City determines that it needs such support from an independent consultant to assure that any remediation contracts protect the interests of the City and the Authority. Such assistance could include assisting the City in strategically evaluating remediation, transfer and insurance issues in an early transfer context; and in reviewing the Environmental Impact Report, FOST, FOSET, Covenant Deferral Request, ESCA, Consent Agreement, environmental insurance policies, and associated documents in relation to the GFP Contract; and
3. Assisting the Authority in preparing and presenting technical and financial information to the public and City officials to aid in the decision-making process and attending technical and strategy meetings regarding the above.

ITEM 8B – EXHIBIT A

Scope of Work for Task B

- Task B.1: Technical support in drafting a request for qualifications for a remediation contractor, evaluating bids and selecting a contractor. Estimate approximately 200 hours. **(Completed)**
- Task B.2: Technical support in preparation for and at meetings and negotiations with GFP Contractor, Navy and regulators to discuss early transfer issues as related to the GFP Contract (preparation, meeting attendance, and documentation of meeting). Estimate = 27 meetings and 26 conference calls
- Task B.3: Supplemental technical meetings including conference calls (preparation, meeting attendance, documentation of meetings related to TICD negotiations for a fixed price remediation contract, including cost cap insurance with the TICD selected contractor). Estimate = 20 meetings and 20 conference calls
- Task B.4: Review of technical documents related to the GFP Contract, including an ESCA, FOST, FOSET, and cost cap and pollution legal liability insurance policies. Estimate = 16 documents.
- Task B.5: Preparing and presenting technical and financial information to the public and City officials to aid in the decision-making process. Estimate = 5 meetings.
- Task B.6: Additional consultation (at request of Authority) and contingency. The Authority must preauthorize activities under this Task in writing.

(c) **Appendix B, Calculation of Charges**, is hereby amended to read as follows:

Appendix B Calculation of Charges

The total amount of this contract shall not exceed \$1,439,000

Scope of Work for Task A

- Task A.1: Regularly scheduled BRAC Closure Team meetings (preparation, meeting attendance, documentation of meeting). Estimate = 67 meetings in San Francisco and 8 meetings held in San Diego).
Budget: \$158,000 (Assumes average cost is \$2000 per meeting in San Francisco, \$3000 per meeting in San Diego).
- Task A.2: Supplemental technical meetings (preparation, meeting attendance, documentation of meeting). Estimate = 50 meetings and 22 conference calls.
Budget: \$107,700 (Assumes average of \$2000 per meeting and \$350 per conference call)
- Task A.3: Review of technical documents including reports and work plans. Estimate = 205 documents.
Budget: \$656,000 (Assumes average of \$3200 per document)
- Task A.4: Interim data review and preparation of written summary. Estimate = 26 data sets.
Budget: \$52,000 (Assumes average of \$2000 per data set)
- Task A.5: Oversight of fieldwork including collections of split samples to assess data quality. Estimate = 4 assessments of fieldwork.
Budget: \$20,000 (Assumes average of \$5000 per assessment).

ITEM 8B – EXHIBIT A

Task A.6: Additional consultation (at request of Authority) and contingency.
The Authority must preauthorize activities under this Task in writing.

Budget: \$95,200 (Assumes approximately 9% of Tasks One through Five)

TOTAL BUDGET FOR TASK A: \$1,088,900

Scope of Work for Task B

Task B.1: Technical support in drafting a request for qualifications for a remediation contractor, evaluating bids and selecting a contractor. Estimate approximately 200 hours. **(Completed)**

Budget: \$40,000 (Assumes \$20,000 to support drafting RFQ and \$20,000 for evaluation of bids and selecting a contractor).

Task B.2: Technical support in preparation for and at meetings and negotiations with GFP Contractor, Navy and regulators to discuss early transfer issues as related to the GFP Contract (preparation, meeting attendance, and documentation of meeting). Estimate = 27 meetings and 26 conference calls

Budget: \$63,100 (Assumes 27 meetings at an average cost of \$2000 per meeting. Assumes 26 conference calls at \$350 per call).

Task B.3: Supplemental technical meetings including conference calls (preparation, meeting attendance, documentation of meetings related to TICD negotiations for a fixed price remediation contract, including cost cap insurance with the TICD selected contractor). Estimate = 20 meetings and 20 conference calls

Budget: \$87,000 (Assumes 20 meetings with an average cost of \$4000 per meeting. We anticipate that the level of effort to prepare for these meetings will be significantly greater than for meetings under Task One. Assumes 20 conference calls at \$350 per call).

Task B.4: Review of technical documents related to the GFP Contract, including an ESCA, FOST, FOSET, and cost cap and pollution legal liability insurance policies. Estimate = 16 documents.

Budget: \$80,000 (Assumes average cost is \$5000 per document).

Task B.5: Preparing and presenting technical and financial information to the public and City officials to aid in the decision-making process. Estimate = 5 meetings.

Budget: \$50,000 (Assumes average cost is \$10,000 per meeting. We anticipate that a significant level of effort will be required to prepare presentations and materials for these meetings).

Task B.6: Additional consultation (at request of Authority) and contingency. The Authority must preauthorize activities under this Task in writing.

Budget: \$30,000 (Approximately 9% of Tasks One through Five).

TOTAL BUDGET FOR TASK B: \$350,100

(d) **Section 5, Compensation**, is hereby amended to read as follows:

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Joint Development, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **one million four hundred thirty-nine thousand**

ITEM 8B – EXHIBIT A

dollars (\$1,439,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Director of Joint Development as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Form 7, "Prime Consultant/Joint Venture Partner(s) and Sub-consultant Participation Report." If HRC Form 7 is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Form 7 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Form 7 is provided.

Following Authority's payment of an invoice, Contractor has ten days to file an affidavit using HRC Form 9, "Sub-Consultant Payment Affidavit," verifying that all subcontractors have been paid and specifying the amount.

PERSONNEL (pursuant January 25, 2008 Schedule of Charges)

Personnel charges are for technical work, including technical typing, editing, and graphics involved in the preparation of reports and correspondence and for the time associated with production of such documents. Direct charges are not made for secretarial service, office management, accounting, and maintenance, because these items are included in overhead. Personnel category charge rates for Geomatrix Consultants, Inc. are listed below. Regional and other factors may influence rates charged for certain individuals. Rates for individuals will be provided on request.

Personnel Category	CURRENT HOURLY RATE
Principal Engineer/Scientist	\$225 – 350
Senior Decision Analyst	210 – 300
Senior Engineer/Scientist II	190 - 210
Senior Engineer/Scientist I	180
GIS Programmer/Web Designer II	140
Project Engineer/Scientist II	136
Project Engineer/Scientist I	126
Staff Engineer/Scientist II	115
Field Engineer	115
Staff Engineer/Scientist I	105
Senior Technician	90
Field Technician	85
CAD/Graphic Designer	93
Project Assistant	73
Technical Editor	88
Support Staff	65

Specific hourly rates for the primary individuals working on the project are as follows:

ITEM 8B – EXHIBIT A

Gary Foote	\$250
Jim McClure	\$210

Hourly rates for other Geomatrix experts who may work on the project from time-to-time are as follows:

Frank Szerdy (Engineer)	\$250
Jim Embree (Toxicologist)	325
Tom Delfino (Statistics and Decision Analysis)	250
Lester Feldman (Regulatory Affairs)	300

Time spent in travel in the interest of the client will be charged at hourly rates, except that no more than 8 hours of travel time will be charged in any day. When it is necessary for an employee to be away from the office overnight, actual costs, or a negotiated rate, will be charged for living expenses.

(e) **Executive Director.** All references in the Agreement to "Executive Director" are hereby amended to be "Director of Joint Development."

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and Authority have executed this Amendment as of the date first referenced above.

AUTHORITY

Jack Sylvan, Director of Joint Development
On behalf of Treasure Island Development
Authority

Approved as to form

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

James C. Price, Vice President/CFO
Geomatrix Consultants, Inc.
2101 Webster Street 12th Floor
Oakland, CA 94612
(510)663-4100
FEIN: 94-2934407
Vendor No: 082

AGENDA ITEM 8 (c)
Treasure Island Development Authority
City and County of San Francisco
May 14, 2008

Subject: Resolution Approving and Authorizing the Director of Island Operations to Retroactively Execute a Use Permit with The O'Brien's Group, Inc., a California corporation for the Use of Quarters 62

Contact: Richard A. Rovetti, Leasing Manager

Phone: 415-274-3365

BACKGROUND

On November 7, 2007, the container vessel COSCO BUSAN accidentally hit the D Span of the Bay Bridge. The vessel reported damage to the forward left side causing 58,000 gallons of heavy duty bunker fuel to spill into the San Francisco Bay.

A Unified Command was established on the Island that included the US Coast Guard, the National Park Service, the California Fish and Game Office of Oil Spill Prevention and Response, the State Office of Emergency Services, the City and County of San Francisco Department of Emergency Management, and The O'Brien's Group, Inc., a California corporation (O'Brien's Group), contractor for Cosco Busan. During the period of November 10, 2007 to January 31, 2008, O'Brien's Group occupied Building 140, the Nimitz Conference Center located on Treasure Island, to serve as the Incident Command Post for emergency response and cleanup. Since November 2007, O'Brien's Group has also occupied Quarters 62 under a Use Permit that expired on April 30, 2008. Under the proposed Use Permit, O'Brien's Group is requesting a new month-to-month term commencing May 1, 2008 for Quarters 62.

Authority Staff and O'Brien's have negotiated a new Use Permit with a monthly rent of \$2,500. Although a rental rate for this property has not been established, Authority Staff believes \$2,500 represents fair market value for Quarters 62 given its current condition at this time.

PERMIT TERMS AND CONDITIONS

O'Brien's Group will sign the Authority's standard form Use Permit document. The salient terms and conditions of the proposed Use Permit include the following:

Premises: Quarters 62

Commencement Date: May 1, 2008

Expiration Date: November 30, 2008

Term: Month-to-Month

Permit Fees: \$2,500.00

Permitted Use: General office use only and for no other purpose whatsoever

BUDGET IMPACT

The new Use Permit will provide an increase of approximately \$17,500.00 to the Authority's budget during the proposed term.

RECOMMENDATION

The Authority Staff recommends that the Authority Board of Directors retroactively approve the proposed Use Permit with The O'Brien's Group, Inc., a California corporation and authorize the Director of Island Operations or her designee to execute said Use Permit for the rental of Quarters 62 on Yerba Buena Island for a month-to-month term and subject to the additional terms and conditions set forth above.

EXHIBIT A: Use Permit between the Treasure Island Development Authority and The O'Brien's Group, Inc.

Prepared by: Richard A. Rovetti, Leasing Manager
For: Mirian Saez, Director of Island Operations

[Use Permit with O'Brien's Group Foundation]

Resolution Approving and Authorizing the Execution of a Use Permit with The O'Brien's Group, Inc. for Use of Quarters 62.

WHEREAS, Former Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America, acting by and through the Department of the Navy; and,

WHEREAS, The Base was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco (the "City"); and,

WHEREAS, Since November 2007, O'Brien's Group, Inc., a California corporation (hereafter referred to as "O'Brien's Group"), has occupied Quarters 62 under a Use Permit that expired on April 30, 2008; and,

WHEREAS, Under the proposed Use Permit, O'Brien's Group is requesting a new month-to-month Use Permit for use of Quarters 62 located on Yerba Buena Island with a monthly rent of \$2,500.00; and,

WHEREAS, Although the Authority has not conducted an appraisal of Quarters 62, Authority Staff believes \$2,500 represents fair market value for Quarters 62 given its current condition at this time; now, therefore, be it

ITEM 8C – EXHIBIT A

USE PERMIT

THIS USE PERMIT (this "Permit") dated for reference only as of May 1, 2008, is made by and between the Treasure Island Development Authority ("Authority") and The O'Brien's Group, Inc., a California corporation ("Permittee").

RECITALS

WHEREAS, pursuant to that certain Lease between the United States of America and Treasure Island Development Authority for Land and Structures Naval Station Treasure Island (the "Master Lease"), by and between the Authority and the Department of Navy (the "Navy"), a copy of which is attached hereto as Exhibit A, the Authority has the right to use that certain property located on Naval Station Treasure Island (the "Property"), as more particularly described in the Master Lease; and

WHEREAS, Permittee seeks to use a portion of the Property for the purposes stated herein, subject to the terms and conditions of this Permit.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Authority and Permittee agree as follows:

1. Basic Permit Information

The following is a summary of the basic permit information (the "Basic Permit Information"). Each item below shall be deemed to incorporate all of the terms of this Permit pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of the Permit, the more specific provision shall control.

Authority:	TREASURE ISLAND DEVELOPMENT AUTHORITY, a California nonprofit public benefit corporation
Permittee:	THE O'BRIEN'S GROUP, INC., a California corporation
Premises (Section 2):	That certain portion of the Property commonly known as Quarters 62 and portions of the parking area adjacent thereto, all as more particularly shown on <u>Exhibit B</u> , attached hereto.
Structural Report (Section 5):	None.
Permitted Use (Section 6):	Quarters 62 shall be used for general office use only and for no other purpose whatsoever.
Parking Rights (Section 7):	Up to three (3) vehicles may be parked in the area designated for parking on <u>Exhibit B</u> , attached hereto.
Permit Fees (Section 11):	Two Thousand Five Hundred Dollars (\$2,500.00) per month.

ITEM 8C – EXHIBIT A

Term (Section 12):

Commencement date: May 1, 2008
Expiration date: November 30, 2008

Notwithstanding anything in this Permit to the contrary, either the Authority or Permittee, in its sole discretion, may terminate this Permit for any reason upon delivery of not less than thirty (30) days' prior written notice to the other party.

Utilities (Section 19):

See Section 19.

Insurance Limits (Section 21):

Worker's Compensation Insurance - statutory amounts

Employers' Liability Coverage with limits of not less than \$1,000,000 for each accident or occurrence

Comprehensive or Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage

Comprehensive or Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage

Address for Notices (Section 26):

Authority:

Treasure Island Development Authority
410 Avenue of the Palms
Building 1, 2nd Floor
Treasure Island
San Francisco, CA 94130
Attn.: Director of Island Operations
Phone No.: (415) 274-0660
Fax No.: (415) 274-0299

Permittee:

The O'Brien's Group, Inc.
2929 East Imperial Hwy, Suite 290
Brea, CA 92821
Attn.: Keith Forster
Phone No.: 714-577-2116
Fax No.: 714-577-2118

Security Deposit (Section 33):

Not Applicable.

2. License of Premises. Authority confers to Permittee a revocable, personal, non-exclusive and non-possessory license to enter upon and use the Premises described in the Basic Permit Information for the limited purpose and subject to the terms, conditions and restrictions set forth below.

ITEM 8C – EXHIBIT A

This Permit does not constitute a grant to Permittee of any ownership, leasehold, easement or other property interest or estate in the Premises. Authority is acting only in its proprietary capacity in granting the license given to Permittee under this Permit. Permittee acknowledges that (i) such grant is effective only insofar as Authority's rights in the Premises; and (ii) Permittee must separately obtain all regulatory approvals of Authority, the City and County of San Francisco ("City") or any other applicable governmental entity necessary for the Permitted Uses. Permittee shall bear all costs or expenses of any kind in connection with its use of the Premises or any other Master Lease Property.

3. Inspection of Premises. Permittee represents and warrants that Permittee has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Permittee's Agents"), of the Premises and the suitability of the Premises for Permittee's intended use. Permittee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

4. As Is; Disclaimer of Representations. Permittee acknowledges and agrees that the Premises are being licensed and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties ("Laws"), governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Permit is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Permittee acknowledges and agrees that neither Authority nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns ("Authority's Agents") have made, and Authority hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Permittee's use and permitted under this Permit, (v) the safety of the Premises, whether for the use of Permittee or any other person, including Permittee's Agents or Permittee's clients, customers, vendors, invitees, guests, members, licensees, assignees or permittees ("Permittee's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

5. Seismic Report and Structural Report. Without limiting Section 4 above, Permittee expressly acknowledges for itself and Permittee's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Permittee has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils on Treasure Island and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to

ITEM 8C – EXHIBIT A

cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that buildings and any other structures or improvements located on or about the Premises may fail structurally and collapse. Permittee further expressly acknowledges for itself and Permittee's Agents that it received and read that certain Structural Report identified in the Basic Permit Information, a copy of which is attached hereto as Exhibit D (the "Structural Report").

6. Use of Premises. Permittee may enter and use the Premises for the sole purpose described in the Basic Permit Information. Permittee shall not use, and Permittee shall prohibit Permittee's Agents and Permittee's Licensees from using, the Premises for any activities other than the Permitted Uses. Permittee agrees that, by way of example only and without limitation, the following uses of the Premises by Permittee, or any of Permittee's Agents or Permittee's Invitees, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

(a) Hazardous Material. Permittee shall not cause, nor shall Permittee allow any of Permittee's Agents or Permittee's Invitees to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises, or transported to or from the Premises without the prior written consent of Authority. Permittee shall immediately notify Authority when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Premises. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Permittee or Permittee's Agents or Permittee's Invitees cause a release of Hazardous Material, Permittee shall, without cost to Authority and in accordance with all laws and regulations, return the Premises to the condition immediately prior to the release. In connection therewith, Permittee shall afford Authority a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Premises or are naturally occurring substances in the Premises, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises.

(b) Nuisances. Permittee shall not conduct any activities on or about the Premises that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to Authority, to the owners or occupants of neighboring property or to the public.

(c) Damage. Permittee shall not do anything about the Premises that could cause damage to the Premises or any Authority property.

ITEM 8C – EXHIBIT A

7. **Parking.** Permittee shall be allowed to park up to the number of vehicles set forth in the Basic Permit Information in the area designated for parking on Exhibit B attached hereto. To the extent practicable, Permittee shall use its best efforts to encourage ride-sharing, the use of shuttle busses or other pooled-means of transportation to and from the Premises.

8. **Resource Conservation and Sustainability.** Authority is committed to managing the Premises in as sustainable a manner as possible. In addition to Permittee's compliance with the requirements of Section 32 below, Permittee shall use its best efforts to conduct its operations in accordance with sustainable practices and all applicable provisions of the San Francisco Environment Code.

9. **Subject to Authority and City Uses.** Notwithstanding anything to the contrary in this Permit, Permittee's right to use the Premises hereunder shall be subject and subordinate to Authority and City's uses of the Premises for municipal purposes. In addition, Permittee acknowledges that the Property contains a variety of different event venues and outdoor public spaces and it is common for numerous events to be held at various venues on the Property on the same day.

10. **Alterations.** Except as otherwise expressly provided herein, Permittee shall not construct or place any temporary or permanent structures, improvements or signs in, on, under or about the Premises, nor shall Permittee make any alterations, installations or additions ("Alterations") to any of the existing structures, improvements or signs on the Premises, unless Permittee first obtains Authority's prior written consent, which Authority may give or withhold in its sole and absolute discretion. Subject to Authority's consent as provided above, any permitted Alterations shall be done at Permittee's sole expense (i) in strict accordance with plans and specifications approved in advance by Authority in writing, (ii) by duly licensed and bonded contractors approved by Authority, (iii) in a good and professional manner, (iv) in strict compliance with all applicable laws and regulations, and (v) subject to all other conditions that Authority may reasonably impose. Upon termination of this Permit, Permittee shall remove all Alterations constructed or affixed to the Premises by or on behalf of Permittee and repair, at its sole cost and expense, any damage to the Premises caused by the installation or removal of such Alterations.

Without limiting the generality of the foregoing, Permittee acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to any improvements on the Premises (i) which will affect the historic characteristics of the improvements or modify the appearance of the exterior of the improvements without Navy's and Authority's prior written consent, or (ii) if such Alterations would preclude qualifying the improvements for inclusion on the National Register for Historic Places.

11. **Permit Fee.** Permittee shall pay to Authority a one-time non-refundable permit fee in the amount set forth in the Basic Permit Information for its use of the Premises as provided hereunder. Such fee is payable at such time as Permittee signs and delivers this Permit to Authority. Within five (5) days after demand therefor, Permittee shall pay all applicable City departments for the costs incurred by those departments in providing the use of City employees, equipment, property and facilities in connection with this Permit.

12. **Term of Permit; Revocability.** The privilege conferred to Permittee pursuant to this Permit shall commence on Commencement Date and Time set forth in the Basic Permit Information and shall automatically expire on the Expiration Date and Time set forth in the Basic Permit Information, unless amended in writing or sooner terminated or revoked pursuant to the terms hereof. Moreover, if the Master Lease terminates for any reason whatsoever, this

ITEM 8C – EXHIBIT A

Permit shall automatically terminate. Without limiting any of its rights hereunder, Authority may revoke this Permit at any time prior to the Expiration Date and Time, without cause and without any obligation to pay any consideration to Permittee.

13. Compliance with Laws. Permittee shall, at its expense, conduct and cause to be conducted all activities on the Premises allowed hereunder in a safe and reasonable manner and in compliance with all laws, regulations, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act) whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Such laws shall include, but are not limited to, local, state and federal laws prohibiting discrimination in employment and public accommodations. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Premises any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that Authority is entering into this Permit in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Permittee further understands and agrees that no approval by Authority for purposes of this Permit shall be deemed to constitute approval of any federal, state, Authority or other local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals at Permittee's sole cost or limit in any way Authority's exercise of its police powers. Without limiting the foregoing, before beginning any work in the Premises and/or using the Premises, Permittee at its sole cost and expense shall obtain any and all permits, licenses and approvals (collectively, "approvals") of all regulatory agencies and other third parties that are required to commence and complete the permitted work and use the Premises including, but not limited to, approvals required by the San Francisco Fire Department (e.g. General Assembly, Tent, Open Flame, Propane, etc.), the San Francisco Police Department (e.g., alcohol consumption and/or sales), the San Francisco Entertainment Commission (e.g., Loudspeaker, Itinerant Show, etc.), San Francisco Department of Building Inspection (e.g., electrical), the San Francisco Department of Health, and the California Department of Alcoholic Beverage Control (e.g., alcohol consumption and/or sales). Permittee shall provide copies of all such approvals to Authority prior to Permittee's use of the Premises.

14. Security. In addition to the Permit Fee described in Section 11 above, Permittee shall provide the security, police and medical support services described on Exhibit E, attached hereto, at its sole cost and expense.

15. Rules and Regulations. In connection with the Permittee's use hereunder, Permittee shall comply with the Rules and Regulations attached hereto as Exhibit F. Authority reserves the right, in its sole discretion, to change such Rules and Regulations as necessary to promote or protect the public safety, health or convenience. Authority shall give Permittee reasonable prior notice of such changes; provided, however, that no such prior notice shall be required in emergency situations.

16. Surrender. Upon the expiration of this Permit, Permittee shall surrender the Premises in the same condition as received, free from hazards and clear of all debris. At such time, Permittee shall remove all of its property from the Premises permitted hereunder, and shall repair, at its cost, any damage to the Premises caused by such removal. Permittee's obligations under this Section shall survive any termination of this Permit.

17. Repair of Damage. If requested by Authority, Permittee shall promptly, at its sole cost and expense, repair any and all damage to the Premises and any personal property located thereon caused by Permittee or Permittee's Agents or Invitees. Permittee shall obtain Authority's prior written approval of any party to be used by Permittee to conduct such repair

ITEM 8C – EXHIBIT A

work. Alternatively, Authority may make such repairs or behalf of Permittee at Permittee's sole cost and expense. If Permittee damages Authority or Navy facilities or any personal property, the final repair costs owed by Permittee shall be determined by Authority in its sole and absolute discretion, and shall be paid by Permittee within five (5) days after Permittee's demand therefor. Permittee's obligations under this Section shall survive the cancellation, expiration or termination of this Permit.

18. Public Safety. Permittee agrees to conduct the Permitted Uses at all times in a safe and prudent manner with full regard to the public safety and to observe all applicable regulations and requests of Authority and other government agencies responsible for public safety.

19. Utilities. Authority shall provide basic gas, electricity and water to the Premises in reasonable and customary amounts (the "Standard Utilities and Services"). Permittee shall be responsible for furnishing, at its sole cost and expense, any utilities and services other than or in excess of the Standard Utilities and Services that Permittee may need for its use of the Premises. Authority has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Premises. Permittee shall locate any such utilities and protect them from damage arising out of Permittee's activities.

20. Release and Waiver of Claims; Indemnification

20.1. Release and Waiver of Claims. Permittee, on behalf of itself and Permittee's Agents, covenants and agrees that the Authority shall not be responsible for or liable to Permittee for, and, to the fullest extent allowed by any Laws, Permittee hereby waives all rights against the Authority and releases them from, any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses"), including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the buildings thereon due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Authority (except as provided in Section 20.1(a) below). Without limiting the generality of the foregoing:

(a) Without limiting any other waiver contained herein, Permittee on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Authority from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Authority's decision to allow Permittee to use the Premises, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Authority.

(b) Permittee covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Authority any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 20.1.

(c) In executing these waivers and releases, Permittee has not relied upon any representation or statement other than as expressly set forth herein.

ITEM 8C – EXHIBIT A

(d) Permittee has made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Permittee regardless of any claims of mistake.

(e) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

20.2. Acknowledgment. Permittee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Permit.

20.3. Permittee's Indemnity. Permittee, on behalf of itself and Permittee's Agents, shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Authority from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of any building located on the Premises due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Permittee or Permittee's Agents or Permittee's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Permittee's Agents and Permittee's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Permittee in the observation or performance of any of the terms, covenants or conditions of this Permit to be observed or performed on Permittee's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Permittee, Permittee's Agents or Permittee's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises; (f) any construction or other work undertaken by Permittee on or about the Premises whether before or during the Term of this Permit; or (g) any acts, omissions or negligence of Permittee, Permittee's Agents or Permittee's Invitees, or of any trespassers, in, on or about the Premises or any alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Permit and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Authority. Notwithstanding the foregoing, Permittee's obligations to indemnify the Authority under this Section 20.3 shall remain in full force and effect regardless of whether or not the Authority's decision to permit the Premises to the Permittee, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Authority. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any Loss. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by Authority and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or sooner termination of this Permit. Notwithstanding anything contained herein, to

ITEM 8C – EXHIBIT A

the extent such Losses are not covered by insurance required herein and subject to this Section 20.3, Permittee shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

21. INSURANCE

21.1. Permittee's Insurance. Permittee shall procure and maintain throughout the Term of this Permit and pay the cost thereof the following insurance:

(a) If Subtenant has employees, Worker's Compensation Insurance in statutory amounts, with Employers' Liability Coverage with limits of not less than the amount set forth in the Basic Permit Information; and

(b) Comprehensive or Commercial General Liability Insurance with limits not less than the amount set forth in the Basic Permit Information, including coverage for Contractual Liability, Host Liquor Liability, Personal Injury, Advertising Liability, Independent Contractors, Explosion, Collapse and Underground (XCU), Broad Form Property Damage, Products Liability, Completed Operations and Sudden and Accidental Pollution; and

(c) Comprehensive or Business Automobile Liability Insurance with limits not less than the amount set forth in the Basic Permit Information, including coverage for owned, non-owned and hired automobiles, if applicable, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Permittee's activity on, in and around the Premises; and

(d) Such other insurance as required by law or as the City's Risk Manager may require.

21.2. Claims Made Policy. Should any of the required insurance be provided under a claims-made form, Permittee shall maintain such coverage continuously throughout the term of this Permit, and, without lapse, for two (2) years beyond the expiration of this Permit, to the effect that, should occurrences during the Term give rise to claims made after expiration of this Permit, such claims shall be covered by such claims-made policies.

21.3. Annual Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

21.4. Additional Insureds. Liability policies shall be endorsed to name as additional insureds the "Treasure Island Development Authority, City and County of San Francisco, United States of America, acting by and through the Department of the Navy, and their officers, directors, employees and agents" (Insurance Certificate with Endorsement for such additional insureds).

21.5. Payment of Premiums. Permittee shall pay all the premiums for maintaining all required insurance.

21.6. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Authority and Permittee (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises or any portion thereof or the contents of the same or any operation

ITEM 8C – EXHIBIT A

therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Permit or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

21.7. General Insurance Matters.

(a) All insurance policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to Authority at the address for Notices specified in the Basic Permit Information.

(b) All insurance policies shall be endorsed to provide that such insurance is primary to any other insurance available to the additional insureds with respect to claims covered under the policy and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

(c) Before commencement of activities under this Permit, certificates of insurance and brokers' endorsements, in form and with insurers acceptable to Authority, shall be furnished to Authority, along with complete copies of policies if requested by Authority.

(d) All insurance policies required to be maintained by Permittee hereunder shall be issued by an insurance company or companies reasonably acceptable to Authority with an AM Best rating of not less than A-VIII and authorized to do business in the State of California.

21.8. No Limitation on Indemnities. Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations herein or any of Permittee's other obligations or liabilities under this Permit.

21.9. Lapse of Insurance. Notwithstanding anything to the contrary in this Permit, Authority may elect in Authority's sole and absolute discretion to terminate this Permit upon the lapse of any required insurance coverage by written notice to Permittee.

21.10. Permittee's Personal Property. Permittee shall be responsible, at its expense, for separately insuring Permittee's Personal Property.

22. No Assignment. This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances.

23. No Joint Venture or Partnership; Independent Contractor. This Permit does not create a partnership or joint venture between Authority and Permittee. Permittee shall be solely responsible for all matters relating to the payment of its employees, including, without limitation, compliance with any federal, state or local law and all other regulations governing such matters.

24. Impossibility of Performance. If, for any reason, an unforeseen event occurs which is beyond the control of Authority or Permittee, including, but not limited to, fire, casualty or labor strike, which event renders impossible the fulfillment of any term of this Permit, Permittee and Authority shall have no right to nor claim for damages against the other.

ITEM 8C – EXHIBIT A

25. Possessory Interest Taxes; Payment of Taxes. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. Permittee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Permittee's interest under this Permit or use of the Premises pursuant hereto and to pay any other taxes, excises, licenses, permit charges, possessory interest taxes, or assessments based on Permittee's usage of the Premises that may be imposed upon Permittee by applicable law.

26. Notices. Except as otherwise provided herein, any notices given under this Permit shall be addressed to the Authority and Permittee at the addresses set forth in the Basic Permit Information. Notice shall be deemed given (a) two (2) business days after the date when it is deposited with the U.S. Mail, if sent by first class or certified mail, (b) one (1) business day after the date when it is deposited with an overnight carrier, if next business day delivery is required, (c) upon the date personal delivery is made, or (d) upon the date when it is sent by facsimile, if the sender receives a facsimile report confirming such delivery has been successful and the sender mails a copy of such notice to the other party by U.S. first class mail on such date.

27. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

28. Non-Discrimination.

28.1 Covenant Not to Discriminate. In the performance of this Permit, Permittee covenants and agrees not to discriminate on the basis of any fact or perception of a person's race, color, creed, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, height, weight or acquired immune deficiency (AIDS) or HIV syndrome against any employee of, any City or Authority employee working with, or applicant for employment with, Permittee, in any of Permittee's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Permittee.

28.2 Subcontracts. Permittee shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of Section 28.1 above. In addition, Permittee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Permittee's failure to comply with the obligations in this Section shall constitute a material breach of this Permit.

28.3 Non-Discrimination in Benefits. Permittee does not as of the date of this Permit and will not during the term of this Permit, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered

ITEM 8C – EXHIBIT A

with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

28.4 Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this Permit as though fully set forth herein. Permittee shall comply fully with and be bound by all of the provisions that apply to this Permit under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Permittee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

29. Tropical Hardwoods and Virgin Redwood. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Permit.

30. No Tobacco Advertising. Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority, including the property which is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

31. Conflicts of Interest. Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify Authority.

32. Food Service Waste Reduction. Permittee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Permit as though fully set forth. This provision is a material term of this Permit. By entering into this Permit, Permittee agrees that if it breaches this provision, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Permittee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Authority will incur based on the violation, established in light of the circumstances existing at the time this Permit was

ITEM 8C – EXHIBIT A

made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Permittee's failure to comply with this provision.

In addition, if 2,000 or more of Permittee's Agents and/or Permittee's Licensee's will be at the Premises, Permittee shall submit a recycling and waste reduction plan to the Authority's Events Coordinator and comply with State Assembly Bill 2176 (Montanez, Chapter 879, Statutes of 2004).

33. Security Deposit. Permittee shall pay to Authority upon execution of this Permit a security deposit in the amount set forth in the Basic Permit Information as security for the faithful performance of all terms, covenants and conditions of this Permit. Permittee agrees that Authority may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Permittee, Permittee's Agents or Permittee's Invitees, or any failure of Permittee to perform any other terms, covenants or conditions contained in this Permit, without waiving any of Authority's other rights and remedies hereunder or at law or in equity. Authority's obligations with respect to the security deposit are solely that of debtor and not trustee. Authority shall not be required to keep the security deposit separate from its general funds, and Permittee shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Permittee's liability for the performance of any of its obligations under this Permit. To the extent that Authority is not entitled to retain or apply the security deposit pursuant to this Section 33, Authority shall return such security deposit to Permittee within forty-five (45) days of the termination of this Permit, or such longer period as is reasonably necessary for Authority to confirm Permittee's compliance with the requirements of this Permit.

34. General Provisions. (a) This Permit may be amended or modified only by a writing signed by Authority and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (e) Time is of the essence. (f) This Permit shall be governed by California law. (g) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of Authority shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience. (h) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (i) Permittee may not record this Permit or any memorandum hereof. (j) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (k) Any sale or conveyance of the property burdened by this Permit by Authority shall automatically revoke this Permit. (l) This Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

35. Lead Disclosure. Many homes and apartments built before 1978 have paint that contains lead (called lead-based paint). Lead from paint chips and dust can pose serious health hazards if not taken care of properly. The Law requires that tenants and permittees receive certain information before renting pre-1978 housing. By signing this Use Permit, Permittee represents and agrees that Authority has provided Permittee with such information, including, but not limited to:

ITEM 8C – EXHIBIT A

- EPA Booklet entitled "Protect Your Family from Lead in Your Home"
- San Francisco Lead Hazard Notice for Pre-1978 Dwellings
- Disclosure of Information on Lead-Based Paint Hazards

ITEM 8C – EXHIBIT A

Permittee represents and warrants to Authority that it has read and understands the contents of this Permit and agrees to comply with and be bound by all of its provisions.

PERMITTEE:

**The O'Brien's Group, Inc.,
a California corporation**

By: _____

Name: _____

Title: _____

AUTHORITY:

TREASURE ISLAND DEVELOPMENT AUTHORITY

By: _____

Mirian Saez

Director of Island Operations

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By: _____
Deputy City Attorney



AGENDA ITEM (8d)
Treasure Island Development Authority
City and County of San Francisco
Meeting of May 14, 2008

Subject: Resolution Retroactively Approving a Fee Increase for the Banner Space above the Yerba Buena Island Tunnel Effective January 1, 2008 from \$7,500 per month to \$10,000 per month (*Action Item*)

Contact: Mirian Saez
Director of Island Operations
415-274-0660

BACKGROUND

An informational item regarding the rental of the banner space above the Yerba Buena Island Tunnel was presented to the Treasure Island Development Authority Board of Directors (Authority Board) on February 14, 2007. Comments and inquiries raised by the Authority Board and the public were considered while developing the final Banner Rental Policy for the area. On February 14, 2007, the Authority Board also adopted the Twentieth Amendment to the Land and Structures Master Lease to formally include the banner space area above the Yerba Buena Island Tunnel into the lease premises. Finally, the Banner Rental Policy and Guidelines were adopted by the Authority Board on March 14, 2007.

The space above the YBI Tunnel is in a desirable geographical location for promotional announcements and messages because of the high visibility to all motorists commuting to San Francisco westbound via the Bay Bridge. To date, the announcements on the banners have been limited to traffic related messages from regional transportation agencies such as BART and 511, public safety and service announcements, City sponsored events, and essential construction schedule closure notices from CALTRANS regarding the Bay Bridge. Under the current Banner Policy, banners that publicize Island messages and events receive priority. The banners are produced by the applicants at no cost to the Treasure Island Development Authority.

BUDGET IMPACT

The collection of the rental fee for the banner space is a great source of revenue for the Treasure Island Project Office. The revenues generated from the rental of the banner space in 2006 were \$60,000. The revenues in 2007 increased to \$90,000 and the projections for 2008 are \$110,000 based on a \$10,000 per month rental fee. The approval of the rate increase will support the revenue projections for 2008. The space has been booked through the end of 2008 at the rate of \$10,000 per month. A copy of the Banner Schedule is attached as Exhibit A

Finally, Project Staff has had discussions with the City Attorney's Office to look into the legality of putting up commercial messages to generate greater revenues. The City Attorney's Office has advised staff that legal research is being conducted on this issue. Staff will update the Authority Board on the legality of putting commercial messages in the banner space once discussions with the City Attorney's office are completed.

RECOMMENDATION

Staff recommends the Authority Board to retroactively approve the banner rate increase to \$10,000 a month effective January 1, 2008.

EXHIBITS:

Exhibit A: 2008 Banner Schedule

Prepared by Frishtah Afifi, Project Administrator
For Mirian Saez, Director of Island Operations

1 [Approving the Banner Fee Increase]

2 **Resolution Retroactively Approving the Fee Increase of the Banner Space above the**
3 **Yerba Buena Island Tunnel Effective January 1, 2008 from \$7,500 to \$10,000 per month**

4 WHEREAS, Former Naval Station Treasure Island is a military base located on
5 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by
6 the United States of America (the "Navy"); and,

7 WHEREAS, The Base was selected for closure and disposition by the Base
8 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
9 subsequent amendments; and,

10 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
11 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
12 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
13 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
14 conversion of the Base for the public interest, convenience, welfare and common benefit of
15 the inhabitants of the City and County of San Francisco; and,

16 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended
17 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter
18 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority
19 as a redevelopment agency under California redevelopment law with authority over the Base
20 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the
21 Base which are subject to the Tidelands Trust, vested in the Authority the authority to
22 administer the public trust for commerce, navigation and fisheries as to such property; and,

23 WHEREAS, As a Redevelopment Agency the Authority has no indebtedness for the
24 purpose of claiming property taxes and conforms to California Community Redevelopment
25

1 Law regarding the adoption of budgets pursuant to California Health and Safety Code Section
2 33606; and,

3
4 **WHEREAS**, The Treasure Island Project Office, at the request of the Navy's Caretaker
5 Site Office, has administered the rental of the area above the YBI Tunnel for banner
6 announcements; and,

7
8 **WHEREAS**, Banners are currently intended to improve community partnership by
9 promoting regional transportation messages, public service and safety announcements and
10 civic and cultural events sponsored by the Authority and the City of San Francisco; and,

11 **WHEREAS**, The Authority adopted the Banner Policy on March 14 of 2007 as a
12 necessary tool to ensure administration efficiency and transparency in transaction for the
13 Treasure Island Project Staff in managing the space above the Yerba Buena Island Tunnel;
14 and

15 **WHEREAS**, The collection of the rental fee for the banner space is a great source of revenue
16 for the Treasure Island Project Office and the proposed fee increase will further enhance
17 revenue generating Opportunities; now therefore be it

18 **RESOLVED**, That the Board of Directors of the Authority hereby adopts and approves
19 the banner fee increase retroactively from effective January 1, 2008 from \$7,500 per month to
20 \$10,000 per month

21 **CERTIFICATE OF SECRETARY**

22 I hereby certify that I am the duly elected Secretary of the Treasure Island
23 Development Authority, a California nonprofit public benefit corporation, and that the
24 above Resolution was duly adopted and approved by the Board of Directors of the
25 Authority at a properly noticed meeting on May 14, 2008.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Owen Stephens, Secretary

2008 YBI TUNNEL BANNER SCHEDULE

MONTH	BANNER LANGUAGE	COMPANY	Rate
JANUARY	Spare the Air Don't burn wood	Ororke PR	\$750
FEBRUARY	Consider the Alternative, Ride BART	BART	\$10,000
MARCH	Stopwaste. Org	311- Stopwast.org -Underground-	\$10,000
APRIL	511	Swirl	\$10,000
MAY	511	Swirl	\$10,000
JUNE	Spare the Air	Ororke PR	\$10,000
JULY	Campaign to promote conservation of wa	Underground Advertising	\$10,000
AUGUST	Spare the Air	Ororke PR	\$10,000
SEPTEMBER	Water conservation	Underground Advertising	\$10,000
OCTOBER	Consider the Alternative, Ride BART	BART	\$10,000
NOVEMBER	AC Transit	AC Transit	\$10,000
DECEMBER	AC Transit	AC Transit	\$10,000
Total Anticipated Banner Revenues			\$110,750



Agenda Item 9
Treasure Island Development Authority
City and County of San Francisco
Meeting of May 14, 2008

Subject: Resolution Approving the Treasure Island Development Authority Fiscal Year 2008-09 Budget and Authorization to Enter into Work-Orders for Services with other City Departments for Operations, and Authorizing the Director of Island Operations to Submit the Proposed budget to the Mayor of CCSF for further Review and Inclusion in the CCSF 2008-09 Budget. (Action Item)

Contact: Mirian Saez
Director of Island Operations
415-274-0660

BACKGROUND

This presentation is for consideration to approve the budget of the Treasure Island Development Authority ("TIDA") for Fiscal Year 2008-09 ("FY2008-09") and authorize the Director of Island Operations to submit the proposed budget to the Mayor of the City and County of San Francisco for further review and inclusion in the City's FY2008-09 Budget. Additionally, authorize the Director of the Island Operations to enter into Work-Orders with other City Departments for Operations.

TIDA was established as a California nonprofit public benefit corporation and designated certain powers under state and local legislation for the purpose of promoting the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the former Naval Station Treasure Island (the "Base"). Specifically, the Treasure Island Conversion Act of 1997 (the "Act"), passed by the California legislature in 1997, granted to TIDA the State's authority to administer the Tidelands Trust on Treasure Island/Yerba Buena Island and enabled TIDA to be designated as a redevelopment agency under the California Community Redevelopment Law. The Board of Supervisors of the City and County of San Francisco ("City") designated TIDA to manage the conversion of the former Base which includes portions of Yerba Buena Island, from military use to civilian reuse.

The specific mission of TIDA is to redevelop the former Base and manage its integration with the City in compliance with federal, state and city guidelines, including the California Tidelands Trust; create new housing and job opportunities for San Francisco residents, including assuring job opportunities for homeless and economically disadvantaged City residents; increase recreational and Bay access venues for San Francisco and Bay Area residents; and promote the welfare and well being of the citizens of San Francisco.

To achieve these goals, TIDA provides services that can be grouped into two broad categories described in more detail below.

1. Property management and municipal services
2. The transfer of federal property to local jurisdiction and planning of redevelopment activities

1. ***Property Management/Municipal Services.*** Under the provisions of a Cooperative Agreement between TIDA and the United States of America, acting by and through the Department of the Navy ("Navy"), TIDA serves as the property manager for the Base. TIDA is responsible for over all operations including building maintenance, utility operations and maintenance, landscaping, road repair and management of personal property. In addition, the Cooperative Agreement made TIDA and the City responsible for the provision of municipal services to Treasure Island and Yerba Buena Island including public safety services such as police and fire.

To offset the costs associated with property management and public service responsibilities, TIDA established two principal sources of revenue: (i) revenue generated from interim leasing of existing facilities; and (ii) revenue generated from special events on the Base. These functions are provided by Treasure Island Project Staff on the Island. Currently, all Project Staff is classified as temporary employees of the City of San Francisco through the General Services Agency. Staff is housed on Treasure Island and provides a spectrum of services to the Island community by an MOU with the General Services Agency (GSA) and work-orders from other City departments including: the City Attorney Office, the Department of Public Works (DPW), the Police Department ("SFPD"), the Fire Department ("SFPD"), and the Public Utilities Commission ("SFPUC").

2. ***Transfer of Federal Property/Planning for Redevelopment Activities.*** As the designated Local Reuse Authority ("LRA"), TIDA, working through the Office of Joint Development (formerly known as the Office of Reuse and Development), is negotiating with the Navy to acquire all real property at the Base that has not been transferred to other federal agencies or the State of California. TIDA has designated the Office of Joint Development as the lead negotiator and project management entity facilitating the redevelopment of former Naval Station Treasure Island on behalf of TIDA. The Office of Joint Development works collaboratively with the Treasure Island Project Office to ensure effective coordination of interim reuse of the islands. On Treasure Island proper (the flat portion of the Base composed of Bay fill) approximately 365 acres and on Yerba Buena Island approximately 115 acres will be transferred to TIDA in the coming two years.

In an effort to bring closure to the transfer process, TIDA formally requested that the Navy commence negotiating an "Early Transfer" of the Base to TIDA, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). Under CERCLA, the Navy has an obligation to complete all environmental remediation activities at the Base before a change in ownership can occur. However, under the Defense Environmental Program, the Navy is authorized to enter into an agreement with local agencies, such as TIDA, to carry out aspects of the Navy's remedial obligations with funds provided by the Navy after an Early Transfer. The terms for transferring the Navy's remedial obligations to TIDA, including the amount of funds to be made available for investigation and remediation of contamination at the base, will be set forth in an Environmental Services Cooperative

Agreement (“ESCA”) to be negotiated between the Navy and TIDA. The Navy and TIDA are in negotiations for an Early Transfer pursuant to an ESCA.

At the same time TIDA is negotiating with the Navy on the ESCA, TIDA also will need to negotiate a Consent Agreement with the California Environmental Protection Agency’s Department of Toxic Substances Control (“DTSC,” the state lead regulatory agency) to assure that DTSC concurs with the investigation and remediation proposal that forms the basis of the ESCA. Additional negotiations with the California Regional Water Quality Control Board – San Francisco Bay Region and/or the United States Environmental Protection Agency likely will be required to assure their concurrence with certain aspects of the planned investigations and remediation proposals.

Simultaneously, TIDA is negotiating for the transfer of property based on its submittal to the Navy of an Amended and Restated Economic Development Conveyance (“EDC”) application in June 2007. The Amended and Restated EDC application is based on the current redevelopment plans for the island.

TIDA is also engaged in an extensive public process involving establishing a Redevelopment Plan for reuse of the islands. Working through the Office of Joint Development, TIDA is negotiating with the prospective master developer, Treasure Island Community Development, LLC (“TICD”), who was selected through a competitive process on the plans, program and business terms of the redevelopment project. In December of 2006, the TIDA Board and the Board of Supervisors endorsed a comprehensive Development Plan and Term Sheet for Treasure Island, including land use, infrastructure, affordable housing, sustainability, open space, and financing plans. Ultimately, these plans will be memorialized in a Disposition and Development Agreement that is supported by a Redevelopment Plan, General Plan amendments, environmental review consistent with the California Environmental Quality Act, and a Tidelands Trust Exchange Agreement with the State Lands Commission, among other legal requirements. Project entitlements are expected by the end of 2009.

TIDA is also negotiating the plans and business terms for an expanded marina in Clipper Cove with Treasure Island Enterprises which was selected via a competitive RFP process.

FISCAL YEAR 2008-09 BUDGET DISCUSSIONS

In presenting the FY 2008-09 Budget, a review of this year’s revenues and expenses is first required. While TIDA will experience a short fall in the projected housing revenue, expenses are less than projected and our commercial revenue is better than anticipated. Staff projects a budget surplus at fiscal year end, June 30, 2008.

Unrealized FY 2007-08 Revenues

The TIDA approved budget for FY 2007-08 projected housing revenues at \$6,213,522 not including Common Area Maintenance Charges. A revised projection provided by the John Stewart Company in February of 2008 calculates this fiscal year's housing revenues at \$5,913,523. Based on the revision, the decrease in the housing revenues this fiscal year is estimated at approximately \$300,000. The decrease is due to delay in completion of the Navy's remediation efforts in IR Site 12, which was scheduled to be completed in October of 2007. This delay has kept potential revenue producing units off line longer than anticipated.

Unplanned FY 2007-08 Expenditures

The main unplanned expense in FY 2007-08 was \$25,000 for clerical and administrative support from temp services. A temporary position was used from July to October of 2007 to back fill the Receptionist/Administrator position while the staff member was out on a family medical leave. A temporary position is also being used to provide administrative support to the Director of Island Operations during her temporary assignment as the Interim Director of the Housing Authority.

FY 2008-09 Budget

Similar to FY 2007-08, Project Staff has separated Operations and Redevelopment so as not to skew the income and expense for the fiscal year. The Operations projected annual revenue is \$11,014,675. Approximately another \$2,641,087 is projected in Developer Reimbursement for redevelopment planning activities.

The total Project Staff Office expenses (staff salaries, MOU agreement) are \$1,073,602. TIDA's administrative expenses and contractual obligations including its Community Benefits Fund expenses are \$1,912,745. The Operations contractual obligations include Toolworks, Rubicon, Golden Gate Disposal, TIHDI, YMCA, marine salvage, special events staff and liability insurance for TIDA's Directors. New this year is about \$120,000 to purchase property insurance for our historic buildings on Treasure Island. Also new this year, is funding to support the 70th Golden Gate International Exposition Anniversary.

The remaining revenues funds work-orders with City Departments for services including DPW, City Attorney, Risk Manager, DTIS and GSA. The approval of the FY 2008-09 Budget authorizes the expenditures under these work-orders.

Project Staff proposes to make capital improvements to Treasure Island buildings in the amount of \$810,000 utilizing the skilled laborers at DPW and PUC.

The total expenditures budgeted for the SF PUC is \$950,000 in FY 2008-09. The budget for the PUC utility services is decreased to \$550,000 due to the decrease in actual expenditures in FY 2007-08. The \$300,000 amount for the rental of the generators remains the same although TIDA seeks to purchase the generators rather than continue to rent. In addition, another \$100,000 will be set aside for the PUC pending the completion of a Memorandum of Understanding with the PUC for the repayment of TIDA's outstanding liabilities from the previous years. Finally, \$43,500 will be budgeted separately under Capital Improvement Projects for replacement of street lighting in residential areas on Treasure and Yerba Buena Island.

The proposed FY 2008-09 Budget recommends \$4,574,791 for TIDA contributions to the General Fund for police and fire services.

The approval of the FY2008-09 Budget authorizes the above expenditures.

The Director of Island Operations has reviewed revenue enhancements opportunities with the John Stewart Company. Project Staff anticipates improved commercial leasing revenues with the hiring of a new Leasing Manager. Special Event revenues should experience an increase as well due to the Joint Venture between TIHDI, Toolworks and Wine Valley Catering.

The FY 2008-09 Budget Information is outlined in the following categories and exhibits:

Exhibit A-Notable Budget Summary

Exhibit B- TIDA Revenue Spreadsheet

Exhibit C -TIDA Revenue Details

Exhibit D -Expense Spreadsheet Operations

Exhibit E-Expense Details Operations

Exhibit F- FY 2008-09 Redevelopment Budget Expense Details

Exhibit G-FY 2008-09 Operations Accomplishments

Exhibit H-FY 2008-09 Redevelopment Accomplishments

Exhibit I-FY 2008-09 Operations Goals

Exhibit J-FY 2008-09 Redevelopment Goals

Prepared by Frishtah Afifi, Project Administrator
for Mirian Saez, Director of Island Operations





RECYCLED PAPER MADE WITH 20% POST CONSUMER CONTENT





RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT

NOTABLE BUDGET SUMMARY:

- **REVENUES:** Total revenues from property management activities are projected to be \$11,014,675 in FY 2008-09. TIDA's main revenue source of approximately \$6,381,168 million is from rental of housing units on Treasure and Yerba Buena Islands, managed under an agreement with the John Stewart Company ("JSCO").
- **EXPENSES:** The FY 2008-09 Budget projects gross property management expenditures at \$11,014,675. Further, approximately \$2,641,078 is budgeted for redevelopment planning costs that will be incurred in FY 2008-09 which will be 100% reimbursed by the Master Developer. The expenses for redevelopment related activities are listed separately from the operating activities. In addition, salaries and fringes are listed under General Services Agency (GSA) since Project Staff is housed as employees of GSA, as per our MOU. TIDA will work-order monies to fund 8 positions for operations and 2 positions for redevelopment planning activities. The expenditures for the SF PUC has decreased to \$950,000 in FY 2008-09. The budget for the PUC utility services is reduced to \$550,000 based on actual expenditures in FY 2007-08. The \$300,000 amount for the rental of the generators remains the same although we seek to purchase the generators rather than continue to rent. In addition \$100,000 will be set aside for the PUC pending the results of negotiation and execution of the MOU for TIDA's outstanding liabilities from the previous years. Finally, \$43,500 is allocated for replacement of street lighting in residential areas on Treasure and Yerba Buena Island under Capital Improvement Projects.

The DPW Bureau of Building Repair's budget of \$1,165,562 mostly remains at a level consistent with FY 2007-08. In addition, funding for Special Capital Improvement has been budgeted at \$810,000 for renovation work in historical buildings. A new expenditure line has been added for demolition of Building 92 and Building 7.

Finally, for Protective Services which includes the funding for SFFD and SFPD, this year's budget allocates \$4,574,791 to the General Fund.

- **REIMBURSEMENTS:** The FY 2008-09 Budget includes an estimated \$2,641,078 in reimbursements by the Master Developer, Treasure Island Community Development (TICD), for TIDA's redevelopment planning costs under the terms of the Exclusive Negotiation Agreement (ENA) between TIDA and TICD. These costs include engineering services, fiscal and economic analysis, planning, and the reimbursement of services provided by the Office of Joint Development, City Attorney's Office and designated TIDA staff.
- **AFFORDABLE HOUSING AND ECONOMIC DEVELOPMENT**
 - I. In support of the City's affordable housing objectives and to comply with the Base Closure and Homeless Assistance Act of 1994, TIDA provides housing to nonprofit organizations affiliated with the Treasure Island Homeless Development Initiative to assist economically disadvantaged and homeless San

Franciscans. In the FY 08-09 TIHDI will have a 250 unit portfolio. These units remain offline to market rate residents, a conservative estimate of forgone revenues in support of affordable housing programs is \$5.4 million annually based on the below calculations.

250 unit portfolio: $250 \times \$1,800$ (Average Apt. Rent) = \$450,000 per month
 $\$450,000 \times 12 = \$5,400,000$ Annual

- II. In 1996, the San Francisco Board of Supervisors approved the TIHDI Agreement which included certain designated units on the Base for use by TIHDI member organizations. TIHDI has shared some of its units with TIDA in exchange for a revenue share agreement. Effective July 1, 2007 the formula for the Sharing Agreement changed. Based on the new formula, TIHDI will receive approximately \$509,603 or 8.49% of the total housing revenues of \$6,002,400 from Treasure and Yerba Buena island units that TIDA projects from JSCO. This amount has already been deducted from the revenue projections of this FY 2008-09.

III. **Economic Community Development Contributions**

In support of the City's economic development initiatives, TIDA has no bid contractual agreements in the amount of approximately 1.5 million with TIHDI member organizations Rubicon and Toolworks. TIHDI's annual operating contract is in the amount of \$175,000. An additional \$140,000 is allocated to the Boy and Girls Club on the Island for recreational support programs for Island residents.

• **OTHER CONSIDERATIONS**

- I. The use of non-tax revenues to pay for City services on Treasure Island is limited to the legal factor of the Tidelands Trust. Treasure Island proper and a small portion of Yerba Buena Island are subject to the Tidelands Trust, which is governed by the State Lands Commission. The Tidelands Trust requires that revenues generated from Trust lands be used for Trust purposes. As a result, revenues generated on Trust lands (i) must be carefully tracked, (ii) should not be used to pay for City services provided to non-Trust properties such as the greater part of Yerba Buena Island (including property owned by the Coast Guard), the Job Corps, and the Bay Bridge, and (iii) must be limited to reasonable costs that directly benefit the Trust. On the other hand, the Base's geographic remoteness and corresponding need for dedicated personnel may make such services sufficiently unique to justify using Trust revenues to pay for them.
- II. Based on February 2008 discussion with the John Stewart Company, TIDA pays the City approximately \$75,000 annually in property Possessory Interest Tax for Treasure and Yerba Buena Islands.



RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT



Treasure Island Development Authority
FY 2008-09 Revenues

TIDA 2008-09 REVENUE SOURCES	2007-08 TIDA Approved Budget	2008-09 Proposed Budget
Developer Reimbursements	Reclassified as non-revenue	Reclassified as non-revenue
TI Special Events Revenues	\$550,000.00	\$671,150.00
TI Commercial Revenues	\$519,430.00	\$864,400.00
TI Film Revenues	\$30,000.00	\$30,000.00
YBI Filming/Celldites/ Banner Revenues	\$121,430.00	\$323,400.00
Marina Revenues	\$181,715.00	\$186,635.00
TI Housing Revenues	\$4,880,518.92	\$4,723,805.00
YBI Housing Revenues	\$794,503.00	\$768,991.00
JSCO CAM Revenues	\$472,009.00	\$339,608.00
JSCO Base Rent	\$538,500.00	\$548,686.00
SFFD Training Academy	\$1,800,000.00	\$1,800,000.00
Community Benefits Carryforwards from FY 2007-08	Not Reflected in the FY 2007-08	\$144,000.00
Carry Forwards from FY 2007-08	Not Reflected in the FY 2007-08	\$300,000.00
Carryforwards from FY 2005-06	Not Reflected in the FY 2007-08	\$314,000.00
Grand Totals	\$9,888,106	\$11,014,675





RECYCLED PAPER MADE FROM 30% POST CONSUMER CONTAIN



I. TIDA REVENUE DETAILS

A. TI Special Events Revenues

This amount reflects revenues received from special events held on Treasure Island such as corporate events, wedding receptions, and chapel use, etc. The revenues are projected to experience a substantial increase due to the Joint Venture between TIHDI, Toolworks, and Wine Valley Catering. The Joint Venture will allow Wine Valley Catering to heavily market the Venues and, in turn, to increase the amount of booked events per year. This increase in rental fees generated, coupled with the 3% of gross revenue earned by food sales, will significantly increase the Special Events revenues. In addition, Project Staff is also working on a Fog Watch tent project scheduled for early 2009 that will also increase the event revenues by providing an additional venue.

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$550,000	\$671,150.00	\$121,150

TI/YBI Special Events Revenues FY08-09

	Annualized
TIHDI, Wine Valley Catering, Toolworks Joint Venture	\$424,800.00
TIDA Booked Events 28 Casa, 23 Chapel, 7 Great Lawn, 1 Bldg 180 (07-08 to 12-08)	\$132,350.00
2009 Events Make a Wish (15K) Oracle (45K)	\$60,000.00
Fog Watch Pavilion Project (Jan thru June 2009) 9K per month	\$54,000.00
Total:	\$671,150.00



B. TI Commercial Revenues

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$519,430	\$864,400	\$344,970

This amount reflects executed leases for space on Treasure Island associated with new leasing activity during FY 2007-08 based on the following agreements.



TI/YBI Commercial Leasing Revenues FY08-09

Tenant Name	Monthly Rents	Annualized
Commercial Tenants		
Azich, Vinka	\$400.00	\$4,800.00
Bay Area Air Quality Management District	\$300.00	\$3,600.00
Beyond Productions	\$3,726.00	\$44,712.00
Boys & Girls Club	\$587.00	\$7,044.00
CC Meyers	\$10,500.00	\$126,000.00
California Logistics	\$4,759.00	\$57,108.00
CalTrans - B1	\$3,250.00	\$39,000.00
Casa No Comprende	\$1,980.00	\$23,760.00
Chase, William	\$83.26	\$999.12
Collister, William	\$1,600.00	\$19,200.00
Doyle Designs	\$460.02	\$5,520.24
Glide (New Location @ TI Elementary School Bldg)	\$5,000.00	\$60,000.00
Golden Gate Youth Rugby	\$1,030.00	\$12,360.00
Goodwill	\$3,316.00	\$39,792.00
Island Creative Management	\$20,964.17	\$251,570.04
Kidango Childcare Center	\$630.00	\$7,560.00
Lawrence Berkeley Labs	\$250.00	\$3,000.00
Rubicon Mgmt. Office	\$325.00	\$3,900.00
SF Museum & Historical Society	\$800.00	\$9,600.00
SF Vendings	\$255.00	\$3,060.00
SFPD Behavioral Science Unit	\$850.00	\$10,200.00
TIHDI - B1	\$307.00	\$3,684.00
TIHDI - Service Space	\$105.00	\$1,260.00
TIJCC - Cook's Café	\$700.00	\$8,400.00
Tri-California Events	\$459.00	\$5,508.00
Walter Wong Construction	\$2,060.00	\$24,720.00
Wine Valley Catering - B1	\$263.00	\$3,156.00
TOTAL	\$66,368.45	\$796,421.40
Estimated Potential New Commercial Leasing for FY 2008-09		
SFPD TI Elementary School Bldg	\$1,500.00	\$18,000.00
Brett Crockett Bldg 1	\$400.00	\$4,800.00
David Gibson Bldg 1	\$540.00	\$6,480.00
Job Corps Bldg 1	\$750.00	\$9,000.00
Sherri Lyn Wood	\$415.00	\$4,980.00
Subtotal	\$5,665.00	\$67,980.00
TOTAL Current & Potential New Leasing	\$72,033.45	\$864,401.40



C. TI Film Permits

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$30,000	\$30,000	No change

This amount reflects revenues received from film permits issued on Treasure Island.

D. YBI Cell Sites & Banner Revenues

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$121,430	\$323,400	\$138,000

This amount reflects revenues that will be received from cell sites (\$173,400) and YBI Tunnel banner permits (\$150,000) issued on Yerba Buena Island. The increase is based on the banner renewal rates of \$10,000 per month in calendar year 2008 and proposed increase of \$15,000 per month in 2009. Further, new cell site agreements will be generating additional revenues per month based on the following schedule.

Treasure Island Development Authority
FY 2008-09 Revenues

TIDA 2008-09 YBI Tunnel Banner & Cellsite Revenues	2007-08 Budget	2008-09 Proposed Budget
YBI Banner Revenues 2008-09 (60K July-Dec 08) (90K Jan-June 09)	\$90,000.00	\$150,000.00
Cellsite Agreements		
Comcast	\$18,400.00	\$18,400.00
XO Communications	\$5,000.00	\$5,000.00
New Cingular Wireless	\$12,780.00	\$78,000.00
New Cingular Wireless	\$0.00	\$24,000.00
Verizon	\$0.00	\$24,000.00
T-Mobile	\$0.00	\$24,000.00
Grandtotals	\$126,180.00	\$323,400.00



E. TI Marina

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$181,715	\$186,635	\$4,920

This amount reflects executed agreements including Common Area maintenance charges for use at Treasure Island Marina based on the following agreements.

<u>Tenant</u>	<u>Monthly Rent</u>	<u>Annualized</u>
Treasure Island		
Enterprises	\$8,050.00	\$96,600
TI Yacht Club	\$655.00	\$7,860
TI Sailing Center	\$100.00	1,200
Bertone	\$1,060	\$12,730
Salt River Constructions	\$5,000	\$60,000
Historic Tugboat	\$687	\$8,245
Grand Totals	\$15,550	\$186,635



F. JSCO-Housing Revenues

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$6,553,121	\$6,381,168	(\$171,953)

I. Treasure Island Housing Revenues

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$4,880,518	\$4,723,805	(\$156, 713)

Based upon a 578 unit portfolio for FY 08-09, the total projected housing revenues from the John Stewart Company is \$6,381,168. The revenue from the 498 units, or approximately 86% of the housing located on Treasure Island, is projected to be \$4,723,805. The decrease is due to the Navy's environmental remediation work.

II. YBI Housing Revenues

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$794,503	\$768,991	(\$25,512)

The revenue from the 80 units, or approximately 14% of the housing located on Yerba Buena Island, is projected to be \$768,991.

III. JSCO Base Percentage Revenues

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$538,500	\$548,686	\$10,186

The John Stewart Company projects that \$548,686 will be turned over to TIDA in Percentage Base Rent in FY 08-09.

IV. JSCO-Common Area Maintenance (CAM) Revenues

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$339,600	\$339,686	\$86

CAM charges paid to TIDA monthly by the John Stewart Company are reflected in the budget. For FY 2008-09, JSCO has projected the same amount in CAM payments to TIDA as in FY 2007-08.



G. Community Benefit Carry Forwards from FY 2007-08

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
Not Reflected in FY 07-08	\$144,000	\$144,000

\$144,000 is projected to be carried forward from FY 07-08 to FY 08-09 to complete the Community Benefit projects including the Skate Board Park (\$61,000), contract obligations for emergency planning through the Department of Emergency Management (\$75,000) and community outreach for public events (\$8,000). These items will not be completed in FY 2007-08 and are reflected in the proposed FY 2008-09 to gain approval for expenditure.

H. Carry Forwards from FY 2007-08

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
Not Reflected in FY 07-08	\$300,000	\$300,000

Based on discussions with General Services Agency Accounting Department on 4/4/08 some potential surpluses are projected at the end of this FY07-08 to be carry forwarded to FY 08-09 in services of the City Attorney, Public Utilities Commission and the Police Department. A projection of these funds is \$300,000.

I. Carry Forwards from FY 2005-06

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
Not Reflected in FY 07-08	\$314,000	\$314,000

\$314,000 was carried forward from FY 2006-07. The amount was not spent in the current Fiscal Year because the Project Office did not have the budget authority to spend the funds. The amount is reflected in the proposed FY 2008-09 to gain approval for expenditures

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
1155 EAST 58TH STREET, CHICAGO, ILL. 60637

TO: _____
FROM: _____
SUBJECT: _____

RE: _____
DATE: _____

BY: _____

FOR: _____

BY: _____

FOR: _____

BY: _____



RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT

Expenses	TIDA Board Approved 07-08	08-09 Proposed Budget
04/09/08-TIDA OPERATIONS EXPENSES		
ADMINISTRATION		
MISC-REGULAR (Salaries)	Under GSA's Budget	Under GSA's Budget
RETIRE CITY MISC FRINGE BENEFITS	Under GSA's Budget	Under GSA's Budget
TRAVEL COSTS PAID TO EMPLOYEES	\$8,000	\$5,000
TRAINING COSTS PAID TO EMPLOYEES	\$8,000	\$8,000
LOCAL FIELD EXP	\$500	\$750
MEMBERSHIP FEES	\$5,000	\$4,000
PROMOTIONAL AND MARKETING EXPENSE	\$15,000	\$15,000
DELIVERY & POSTAGE (OTHER CURRENT EXPENSES)	\$8,000	\$21,200
OFFICE RENTALS & LEASED EQUIPMENT	\$15,000	\$30,000
OFFICE MATERIALS & SUPPLIES	\$16,000	\$16,000
TOTAL ADMINISTRATION	\$72,000	\$99,950
PROFESSIONAL & SPECIALIZED SERVICES		
TREASURE ISLAND BOYS & GIRLS CLUB HOUSE	\$100,000	\$140,000
TIHDI-OPERATING CONTRACT	\$115,000	\$175,000
TI GYM OPERATIONS YMCA	\$215,000	\$150,000
MARINE SALVAGE	\$25,000	\$20,000
GOLDEN GATE EXPOSITION ANNIVERSARY PRODUCTION	\$0	\$200,000
SPECIAL EVENTSTAFF	\$60,000	\$7,500
COMMUNITY BENEFIT FUND (61K Skate Board Park Project + 75K to DEM \$8,000 outreach Carry Forward FY 07-08 to FY 08-09)	\$465,000	\$144,000
SCAVENGER SERVICES (GOLDEN GATE DISPOSAL)	\$25,000	\$25,000
JANITORIAL SERVICES (Toolworks)	\$150,000	\$150,000
GROUNDS MAINTENANCE (Rubicon Landscaping) (\$750K Reg. Service \$50K Conting.)	\$800,000	\$850,000
TIDA DIRECTOR'S LIABILITY INSURANCE	\$45,000	\$51,245
COMMON AREA MAINTENANCE CHARGES TO OTHER GOVERNMENT AGENCY (NAVY)	\$211,000	\$0
TOTAL PROFFESIONAL & SPECIALIZED SERVICES	\$2,211,000	\$1,912,745
CITY DEPARTMENT WORK-ORDERS		
DTIS SERVICES (AAO)	\$16,000	\$16,000
WI-FI Project	\$0	\$30,000
DEPT OF EMERGENCY MANAGEMENT	75K Transfer from CBF FY07-08 to FY 08-09	\$0
RISK MANAGEMENT INSURANCE CONSULTING	\$6,250	\$127,525
GENERAL SERVICES AGENCY	\$1,065,505	\$1,073,602
GF-CITY ATTORNEY-LEGAL SERVICES (AAO)	\$200,000	\$200,000
GF-HR-MGMT TRAINING (AAO)	\$3,000	\$3,000
IS-PURCH-CENTRAL SHOPS-AUTO MAINT (AAO)	\$3,000	\$3,000
IS-PURCH-CENTRAL SHOPS-FUEL STOCK (AAO)	\$3,500	\$3,500
IS-PURCH-REPRODUCTION (AAO)	\$25,000	\$25,000
GF-PUC-HETCH HETCHY (AAO) (\$550,000 Utility Bills + 300,000 Generators, \$100,000 MOU)	\$1,166,150	\$950,000
SR-DPW-BUILDING REPAIR (AAO)	\$1,166,150	\$1,165,562
SR-DPW-ENGINEERING (AAO)	\$0	\$0
SR-DPW-CONSTRUCTION MGMT (AAO)	\$20,000	\$20,000
SPECIAL CAPITAL IMPROVEMENT PROJECTS	\$489,000	\$810,000
TOTAL CITY DEPARTMENT WORK-ORDERS	\$3,997,405	\$4,427,189
SUBTOTAL OPERATIONS EXPENDITURES	\$6,280,405	\$6,439,884
SURPLUS AVAILABLE FOR DISTRIBUTION TO GENERAL FUND		
PROTECTIVE SERVICES SFFD & SFPD	\$3,572,016.00	\$4,574,791
TOTAL OPERATIONS EXPENDITURES	\$9,852,421	\$11,014,675





II. EXPENSE DETAILS OPERATIONS ACTIVITIES

The expenditure for daily operations for Treasure and Yerba Buena Islands fall under the following four categories: Administration, Professional Specialized Services, City Department Work-Orders and PUC.

A. ADMINISTRATION

1. Travel Costs for Training and Conferences

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$5,000	\$5,000	No Change

The proposed FY 08-09 budget provides the same level of funding as last year for staff travel costs associated with seminars and conferences.

2. Training Costs

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$8,000	\$8,000	No Change

The proposed FY 08-09 budget decreases the level of funding in the amount of \$4,000 from last year for staff training consistent with actual expenditures in FY 2007-08.

3. Local Field Expenses

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$500	\$750	\$250

The proposed FY 08-09 budget increases the level of funding for local field expenses, such as staff parking reimbursements by \$250 consistent with actual expenditures in FY 2007-08.

4. Membership Fees

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$5,000	\$4,000	(\$1,000)

The proposed FY 08-09 budget decreases the level of funding for TIDA staff to professional membership organizations due to actual expenditures in FY 2007-08. Operations staff Performance Plans require joining professional organizations under Professional Development Objectives based on staff areas of responsibilities.

5. **Promotional & Marketing**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$15,000	\$15,000	No Change

The proposed FY 08-09 budget provides the same level of funding as last year to promote and market Special Events venues, to advertise commercial leasing opportunities and to purchase promotional material.

6. **Delivery & Postage (Other Current Expenses)**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$7,500	\$21,200	\$13,700

The proposed FY 08-09 budget increases the level of funding for delivery and postage costs by \$13,700 consistent with expenditures in FY 2007-08. The reason for the increase is community service announcements to the Island residents sent out by the Project Office.

7. **Office Rental and Leased - Equipment**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$15,000	\$30,000	\$15,000

The proposed FY 08-09 increases the level of funding for office machine and equipment rentals including, a copier, postage machine, portable restroom facilities and water dispenser consistent with expenditures in FY 2007-08. The reason for the increase is the large volume of photocopying done for community service announcements to the Island residents sent out by the Project Office.

8. **Office Materials & Supplies**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$16,000	\$16,000	No Change

The proposed FY 08-09 budget provides the same level of funding as last year for office materials and supplies.

The first part of the chapter discusses the importance of the

second part of the chapter discusses the importance of the

third part of the chapter discusses the importance of the

fourth part of the chapter discusses the importance of the

fifth part of the chapter discusses the importance of the

sixth part of the chapter discusses the importance of the

seventh part of the chapter discusses the importance of the

eighth part of the chapter discusses the importance of the

EXPENSES DETAILS OPERATIONS CONTINUED

B. PROFESSIONAL SPECIALIZED SERVICES

1. Boys and Girls Club

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$100,000	\$140,000	\$40,000

General funding for the Boys and Girls Club on Treasure Island was allocated under TIHDI's contract in FY 2007-08. The level of funding for the Boys and Girls Club on Treasure Island has been increased by \$40,000 to continue funding the health, education and youth development services to TI children and their families. These programs were funded through a one time \$80,000 grant in FY 2007-08 from TIDA to the Boys and Girls Club. The additional \$40,000 in the proposed FY 08-09 budget will continue these critically needed services for the Island residents.

2. Treasure Island Homeless Development Initiative (TIHDI)

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$115,000	\$175,000	\$60,000

Under this contract, TIHDI provides several services to TIDA including coordinating and facilitating participation of community-based homeless service organizations as well as future redevelopment planning. TIHDI also provides and coordinates recreational activities on Treasure Island through various programs. The proposed FY 08-09 budget provides an increase of \$60,000 from the last fiscal year because of increased job brokering services required given the Management Agreement and Use Permit with the Joint Venture comprised of TIHDI, Wine Valley Catering and Toolworks for event venue management (\$10,000). The increase will also continue the support for TIHDI's Self Sufficiency Program which was done through a grant (\$50,000) in FY 2007-08.

3. YMCA Gym Operation

TIDA FY 06-07 Budget	Proposed FY2007-08	Change
\$215,000	\$150,000	(\$65,000)

Under this contract, YMCA is funded to operate the Treasure Island gym and create recreational programs for the Island residents. The proposed FY 08-09 budget decreases the level of funding from the last fiscal year based on projected activities to actual expenditures in FY 07-08.

CONTENTS

Original Articles	1
Editorial	1
Correspondence	1
Book Reviews	1
Obituary	1
Announcements	1
Medical News	1
Public Health	1
Legal Notes	1
Medical Education	1
Medical Literature	1
Medical Statistics	1
Medical Jurisprudence	1
Medical History	1
Medical Geography	1
Medical Sociology	1
Medical Psychology	1
Medical Philosophy	1
Medical Ethics	1
Medical Economics	1
Medical Politics	1
Medical Religion	1
Medical Art	1
Medical Science	1
Medical Technology	1
Medical Engineering	1
Medical Architecture	1
Medical Agriculture	1
Medical Forestry	1
Medical Mining	1
Medical Manufacturing	1
Medical Commerce	1
Medical Industry	1
Medical Labor	1
Medical Capital	1
Medical Power	1
Medical Wealth	1
Medical Influence	1
Medical Prestige	1
Medical Honor	1
Medical Fame	1
Medical Glory	1
Medical Power	1
Medical Wealth	1
Medical Influence	1
Medical Prestige	1
Medical Honor	1
Medical Fame	1
Medical Glory	1

Original Articles	1
Editorial	1
Correspondence	1
Book Reviews	1
Obituary	1
Announcements	1
Medical News	1
Public Health	1
Legal Notes	1
Medical Education	1
Medical Literature	1
Medical Statistics	1
Medical Jurisprudence	1
Medical History	1
Medical Geography	1
Medical Sociology	1
Medical Psychology	1
Medical Philosophy	1
Medical Ethics	1
Medical Economics	1
Medical Politics	1
Medical Religion	1
Medical Art	1
Medical Science	1
Medical Technology	1
Medical Engineering	1
Medical Architecture	1
Medical Agriculture	1
Medical Forestry	1
Medical Mining	1
Medical Manufacturing	1
Medical Commerce	1
Medical Industry	1
Medical Labor	1
Medical Capital	1
Medical Power	1
Medical Wealth	1
Medical Influence	1
Medical Prestige	1
Medical Honor	1
Medical Fame	1
Medical Glory	1

Original Articles	1
Editorial	1
Correspondence	1
Book Reviews	1
Obituary	1
Announcements	1
Medical News	1
Public Health	1
Legal Notes	1
Medical Education	1
Medical Literature	1
Medical Statistics	1
Medical Jurisprudence	1
Medical History	1
Medical Geography	1
Medical Sociology	1
Medical Psychology	1
Medical Philosophy	1
Medical Ethics	1
Medical Economics	1
Medical Politics	1
Medical Religion	1
Medical Art	1
Medical Science	1
Medical Technology	1
Medical Engineering	1
Medical Architecture	1
Medical Agriculture	1
Medical Forestry	1
Medical Mining	1
Medical Manufacturing	1
Medical Commerce	1
Medical Industry	1
Medical Labor	1
Medical Capital	1
Medical Power	1
Medical Wealth	1
Medical Influence	1
Medical Prestige	1
Medical Honor	1
Medical Fame	1
Medical Glory	1

4. **Marine Salvage Services**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$25,000	\$20,000	(\$5000)

\$20,000 is budgeted to hire a marine salvage operator for the removal of sunken vessels from the Clipper Cove.

5. **Special Events Support Staff**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$60,000	\$7,500	(\$52,500)

The Special Events contract staff provides various services to support Special Events on weekends including opening and closing venues, monitoring events. Staff acts as liaison services between TIDA Staff and the clients. The amount shall decrease because the Joint Venture comprised of TIHDI, Wine Valley Catering and Toolworks will be responsible for such services in connection with their event venue management services.

6. **Community Benefit Fund**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$465,000	\$144,000	(\$321,000)

The TIDA Board directed staff in Resolution #05-041-11/09, passed on November 9, 2005, to engage in a community process that established priorities for allocating funds from reimbursed redevelopment planning expenses incurred during FY 05-06. In FY 06-07, TIDA was reimbursed \$1,055,244 from the TICD, the master developer for such expenses. The specific projects were selected as a result of community outreach surveys and meetings. The Authority Board, on April 11, 2007, approved the following Community Benefit Fund expenditures.

<u>FY 07-08</u>		<u>Status</u>
a. Kidango for Affordable Childcare	\$25,000	Paid on 11/11/07
b. The Boys and Girls Club	\$80,000	Paid on 10/04/07
c. TIHDI Self Sufficiency Program	\$50,000	Paid on 10/02/07
d. Emergency Supplies	\$30,000	Will be expended by 6/30/08
e. The Playground	\$289,000	Will be expended by 6/30/08
f. Community Outreach Public Events	\$2,000	Will be expended by 6/30/08
FY 07-08 Total	\$476,000	

FY08-09

a. Skate Board Park	\$61,000
b. Emergency Planning DEM	\$75,000
c. Community Outreach Public Events	\$8,000

FY 08-09 Total **\$144,000**

Total for FY 07-08 and FY 08-09 **\$620,000**

Certain Community Benefit projects including the Skate Board Park (\$61,000), Emergency Planning (\$75,000) services through the Department of Emergency Management, and \$8,000 for community outreach for public events will not be completed in FY 2007-08 and are carried forward to FY 08-09.

7. **Scavenger Services**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$25,000	\$25,000	No Change

Golden Gate Disposal provides scavenger services to Treasure and Yerba Buena Islands. The proposed FY 2008-09 budget provides the same level of funding as last fiscal year.

8. **Janitorial Services**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$150,000	\$150,000	No Change

Toolworks provides janitorial maintenance services for various buildings on Treasure Island and is a member organization of TIHDI that employs formerly homeless and economically disadvantaged individuals. The proposed FY 2008-09 budget provides the same level of funding as last fiscal year for janitorial services.

9. **Rubicon Landscaping Grounds Maintenance**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$800,000	\$850,000	\$50,000

Rubicon Enterprises provides all landscaping maintenance services on Treasure and Yerba Buena Islands. Rubicon is a member organization of TIHDI and employs formerly homeless and economically disadvantaged individuals. The proposed FY 2008-09 budget increases the landscaping expenditures by \$50,000 to fund the Vegetation Management Plan for Treasure and Yerba Buena Islands.



10. **Insurance Budget**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$45,000	\$51,245	\$6,245

Liability insurance for TIDA's Board of Directors for FY 2008-09 has been estimated at \$41,300 by Risk Management. An additional \$9,945 is funded for insuring the Miguel Covarrubias Murals which were returned this year and are in storage. The proposed \$51,245 for FY 08-09 budget is an increase of \$6,245 in funding from the last fiscal year.

11. **Navy Common Area Maintenance (CAM) Charges Payments to Other Govt. Agencies**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$211,000	\$0.00	(\$211,000)

TIDA owed the U.S. Navy \$872,000 associated with unpaid common area maintenance (CAM) charges pursuant to the Cooperative Agreement. The Navy has agreed to allow TIDA to repay these charges over time per an agreement approved by the TIDA Board. In FY 2005-06, \$450,000 was paid to the Navy with the remaining \$422,000 to be paid in two equal installments in FY2006-07 and FY2007-08. The CAM payment to the Navy is complete.

12. **Golden Gate Exposition Anniversary Production**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$0	\$200,000	\$200,000

The proposed FY 08-09 funds \$200,000 to produce and coordinate multiple events in celebration of the 70Th Anniversary of the Golden Gate International Exposition.



C. EXPENSES – WORK-ORDER SERVICES OF OTHER DEPARTMENTS

1. DTIS– Telephone

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$16,000	\$16,000	No Change

This \$16,000 provides funds for telephone services as requested by the Department of Telecommunications and Information Systems/GSA. Further, the Project Office's voice-mail system capabilities will be upgraded in the FY 2008-09.

2. WI-FI Project

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$0	\$30,000	\$30,000

This \$30,000 provides funding for a WI-FI Project to enhance the Island's connectivity capabilities through DTIS.

3. Risk Management Insurance Consulting

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$6,250	\$127,525	\$121,275

This \$127,525 provides funding for the City's Risk Manager who reviews the subleases and use-permits for insurance requirements. It also allows for the purchase of building fire and demo insurance which currently TIDA does not have. .

4. General Services Agency

A. Accounting/Budget Preparation/Financial Oversight/IT Services

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$110,000	\$115,000	\$5,000

General Services Agency provides services to TIDA in support of human resources, budget, accounting, financial reporting, payroll, certain information and technology support and more. Management and financial oversight are also part of the MOU agreement.

All network/server/Lotus/workstation/software maintenance and support that were previously provided by DTIS are now managed by General Services Agency. The proposed 2008-09 Budget increases the funding for this line item by \$5,000.



B. **SALARIES & FRINGES**

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$950,505	\$958,602	\$8,097

Staffing will remain at 8 positions in FY 08-09. One 1823 position will be reclassified as a 4142 to work on commercial leasing activities and Special Events. In addition, another 1823 position will be reclassified as a 1840 to perform TIDA Board commission secretarial duties. These changes align the demands of the Island with specialized staff. All positions are employees of General Services Agency (GSA). The total Operations Salaries & Fringes is \$958,602 for the following positions.



TIDA
FY 2008-09 Operations Salary Schedule

FY2008-09-TIDA Operations Salaries & Fringes			Fringe		
Class#	Classification Title	TIDA Job Title	Annual Salary	Benefits	Total
953	Deputy Director III	Director of Island Operations	\$160,419.00	\$28,733.00	\$189,152.00
4143	Principal Real Property Officer	Deputy Director Real Estate	\$113,672.00	\$25,848.00	\$139,520.00
4142	Senior Real Property Officer	Facilities Manager	\$110,396.00	\$24,583.00	\$134,979.00
4142	Senior Real Property Officer	Property/Special Events Manager	\$85,368.00	\$24,583.00	\$115,951.00
1823	Senior Administrative Analyst	Project Administrator	\$82,482.00	\$22,817.00	\$115,299.00
1823	Senior Administrative Analyst	Public Information Officer	\$83,876.00	\$22,817.00	\$106,693.00
1820	Junior Administrative Analyst	Receptionist/Admin Support	\$66,578.00	\$22,098.00	\$78,676.00
1840	TIDA Commission Secretary	TIDA Board Commission Secretary	\$52,234.00	\$22,098.00	\$74,332.00
Grand Total			\$765,025.00	\$193,577.00	\$958,602.00



5. City Attorney

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$200,000	\$200,000	No change

This amount reflects \$200,000 for the City Attorney's Office to provide legal services for TIDA's role as caretaker and property manager of the islands and for other administrative responsibilities. The proposed FY 08-09 provides the same level of funding as last year.

6. Human Resources – Management Training

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$3,000	\$3,000	No Change

The proposed FY 08-09 provides the same level of funding as last year for staff Human Resources and management training.

7. Purchasing -Central Shops–Auto Maintenance

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$3,000	\$3,000	No change

The proposed FY 08-09 provides the same level of funding as last year for vehicle maintenance through Central Shops.

8. Purchasing -Central Shops–Fuel

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$3,500	\$3,500	No Change

The proposed FY 08-09 provides the same level of funding as last year for vehicle fuel through Central Shops.

9. Purchasing –Reproduction

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$25,000	\$25,000	No Change

The proposed FY 08-09 provides the same level of funding as last year for reproduction services.

10. **Public Utilities Commission**

TIDA FY 07-08 Budget	Proposed FY 2008-09	Change
\$1,000,000	\$950,000	(\$50,000)

The proposed FY 08-09 anticipates the utility expenses to decrease from \$700,000 in FY 2007-08 to \$550,000 in FY 08-09. The decrease reflects the actual cost of annual utility services on the Island. The level of funding of \$300,000 for the annual rental of a backup electrical generator located at Treasure Island remains the same although we seek to purchase the generators rather than continue to lease. Another \$100,000 is allocated pending the results and execution of the MOU between TIDA and the PUC for settlement of TIDA's outstanding liabilities from previous years.

11. **Public Works (DPW)**

A. **DPW Bureau of Building Repair (BBR)**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$1,166,152	\$1,166,562	\$410

The proposed FY 08-09 Budget increases the level of funding for the DPW Bureau of Building Repair by \$410.

B. **DPW Engineering**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$0	\$0	No Change

The proposed FY 08-09 Budget allocates zero funding for DPW Engineering.

C. **DPW Construction Management**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$20,000	\$20,000	No Change

The proposed FY 08-09 Budget allocates \$20,000 in funds for DPW Construction Management to oversee the Capital Improvement Projects.

11. **Capital Improvement**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$489,000	\$810,000	\$321,000

A. **Administration Building One**

The proposed FY 08-09 Budget funds the repair and renovation of the Administration Building One in the amount of \$282,000. These renovations include \$250,000 worth of roof repairs on the 4th Floor, \$27,000 for installation of crash bars, and \$5,000 for renovating the building's back staircase.

B. **Building 201**

The proposed FY 08-09 Budget allocates \$50,000 for repairs of the Building 201 roof in order to make the facility more suitable for commercial leasing activities.

C. **Treasure Island Gate Entrance Improvement Project**

The proposed FY 08-09 Budget allocates \$50,000 to repair and beautify the Island's front entrance area.

D. **Pavement Repairs**

The proposed FY 08-09 Budget allocates \$25,500 for the repairs of potholes on Treasure Island.

E. **Street Lighting**

The proposed FY 08-09 Budget allocates \$43,500 for better street lighting on Treasure and Yerba Buena Island to improve security and safety for residents. The street lighting project will be performed by the PUC.

F. **Demolition Project**

The proposed FY 08-09 funds \$359,000 in demolition projects of Building 92 and Building 7 on Treasure Island. The buildings are unsafe and a liability to TIDA and the Navy.

12: **Protective Services**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$3,572,016	\$4,574,791	\$1,002,775

The proposed FY 08-09 Budget allocates \$4,574,791 in contributions to the General Fund for protective services of Treasure and Yerba Buena Islands.





EXPENSES DETAILS REDEVELOPMENT PLANNING ACTIVITIES FY 2008-09

The redevelopment planning expenditure activities for the transfer of the former military base Treasure Island fall under two following categories:

- A. Professional and Specialized Services
- B. City Department Work-Orders.

A. PROFESSIONAL AND SPECIALIZED SERVICES

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$1,131,000	\$1,266,000	\$135,000

The following is an estimate of the consulting services projected for FY 2008-09 to support redevelopment planning activities that enable reuse of the former military facility. These costs will be 100% reimbursed by the prospective master developer per the terms of the ENA between TIDA and TICD, and consist of the following components:

1. Environmental Engineering (Geomatrix)	\$180,000
2. Redevelopment Planning (Seifel)	\$120,000
3. Economic & Fiscal Analysis (RFP)	\$150,000
4. Urban Design/Planning (SERA/Planning)	\$110,000
5. Transportation Planning (TBD)	\$75,000
6. Financial Advisor/Bond Counsel (MOPF)	\$50,000
7. Cost Estimating (TBD)	\$50,000
8. Appraisals/Other Consultants	\$50,000
9. Ferry Study Match Grant	\$281,000
10. YBI Natural Areas Management Plan	\$50,000
11. Infrastructure Consulting & Mapping	\$150,000
Total Projected FY2008-09 costs to be incurred	\$1,266,000

THE UNIVERSITY OF CHICAGO PRESS

6

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

THE UNIVERSITY OF CHICAGO PRESS

B. **City Department Work-Orders**

1. **General Services Agency Staff**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$299,525	\$319,867	\$20,342
0941 Manager VI	(\$154,927 Salary + \$30,372 Fringe = \$185,299)	
1824 Assistant Project Manager	(\$109,356 Salary + \$25,212 Fringe = \$134,568)	

Since the endorsement of the Development Plan and Term Sheet for the Redevelopment of Naval Station Treasure Island (Development Plan) by the Authority Board and the Board of Supervisors in December 2006, the Authority has moved into the next phases of redevelopment planning. These include an increased level of redevelopment planning work including negotiation of a Disposition and Development Agreement with the Master Developer, project-specific environmental review under CEQA, formulation of a Redevelopment Plan, negotiation of transfer of property and environmental remediation responsibilities with the US Navy, negotiation of a Tidelands Trust Exchange Agreement and many other elements discussed previously with the Authority Board. Staff will continue to work on these efforts in the coming fiscal year with the expectation of achieving final project approvals by end of 2009.

2. **Mayor's Office of Economic and Workforce Development**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$235,000	\$235,000	\$0

TIDA has designated staff from the Office of Joint Development as the lead negotiator on behalf of TIDA in negotiations with the US Navy and prospective master developer. The \$235,000 funds services provided by staff in the Office of Joint Development representing TIDA. This \$235,000 will be 100% reimbursed by the prospective master developer.

3. **City Attorney's Office**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$550,000	\$550,000	\$0

\$550,000 is budgeted for the City Attorney's Office and outside counsel's work assisting and representing TIDA in its redevelopment planning and negotiation with the prospective master developer and US Navy for transfer and cleanup of the former

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

base. This \$550,000 for redevelopment planning activities will be 100% reimbursed by the prospective master developer.

4. **Department of the Environment**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$50,000	\$25,000	(\$25,000)

The Department of the Environment has been involved in the redevelopment planning process by assisting with sustainability planning activities. The Department's role in the next fiscal year will involve participating in work on the evolution of the Sustainability Plan, and is budgeting \$25,000 for this scope of work. This \$25,000 will be 100% reimbursed by the prospective master developer.

5. **Planning Department**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$235,000	\$145,211	(\$89,789)

The redevelopment planning process will include environmental review under CEQA. The Planning Department's Major Environmental Analysis division manages the CEQA review process and charges for its time based on a fee schedule based on project size. This \$145,211 will be 100% reimbursed by the prospective master developer.

6. **Public Utilities Commission**

TIDA FY 07-08 Budget	Proposed FY2008-09	Change
\$100,000	\$100,000	No Change

In the next fiscal year, \$100,000 is budgeted for the PUC's role in assisting TIDA in the redevelopment planning and development of infrastructure master plans, which will be 100% reimbursed by the developer under the terms of the ENA.



**TREASURE ISLAND DEVELOPMENT AUTHORITY
PROJECT ACHIEVEMENTS
TREASURE ISLAND OPERATIONS
July 1, 2007 – May 14, 2008**

FISCAL YEAR 2007-2008 OPERATIONS ACCOMPLISHMENTS

1. 7/11/07-Adopted Interim Subleasing Policy
2. 7/11/07-Established and Adopted Volunteer Policy
3. Approval of the following subleases (New & Renewals):
 - Boys and Girls Club Sublease
 - TIHDI – Bldg.1 Offices Sublease
 - Treasure Island Job Corps – Cooks Café- (New)
 - Quarters 10, 61, 62 - Sublease to use as temporary housing (New)
 - CC Myers Sublease (New)
 - Collister Sublease for Buildings 64, 330, 671 (New)
 - Goodwill Sublease
 - 2 Subleases with SF Gaelic Athletic Associations (New)
 - Rubicon Programs
 - Vinka Azich & Associates
 - SF Film Commission Sublease for Hanger 3 (Harvey Milk Production)
4. 7/11/07-Approved Management Agreement and Use Permit for an Economic Development Opportunity with TIHDI which created a Joint Venture Agreement between the Treasure Island Homeless Development Initiative, Wine Valley Catering and Toolworks for event venue management services
5. 9/12/07-Authorized MOU with Department of Emergency Management for Creation of TI/YBI Emergency Operations Plan
6. 9/12/07-Entered into Sole Source Negotiations with Treasure Island Job Corps for Operation of TI Café
7. Activated the Incident Command Post at the Nimitz Conference Center in response to the Bay Area oil spill disaster.
8. 10/10/08-Approved Agreement with Red Cross for Use of Building 1 and Building 140 as Emergency Shelter Locations
9. 10/10/08-Approved Rental Policy for Special Events on Treasure Island and additions to the Event Venue Rate Schedule

10. 11/14/07-Awarded Grants to the Boys & Girls Club (\$80,000), Kidango (\$25,000) and Treasure Island Homeless Development Initiative (\$50,000)
11. 11/30/07-Completed NERT training for Island residents and commercial tenants.
12. 12/12/07-Presented the Comprehensive Vegetation Plan for YBI to the TIDA Board
13. 2/13/08-Established TIDA Revolving Fund (\$1,000)
14. 2/13/08 Rerouted MUNI Bus 108 Line to stop at Safeway and extend operation hours during holidays
15. Increased security hours at the Treasure Island Front Gate from 8 hours to 16 hours per week day
16. Completed the Clipper Cove and Treasure Island Parking signage project
17. Hosted the following major Special Events:
 - Treasure Island Music Festival September 2007
 - California Dragon Boat Association's International Dragon Boat Festival-September 2007
 - Treasure Island International Triathlon-November 2007
 - Make A Wish Foundation-February 2008
 - Fox Sports Net-February 2008
18. 03/07/08 - Redesigned TIDA Website with improved navigation tools to clarify information, and added a page for Commercial Leasing
19. 3/12/08 - Presented the Treasure Island Logo project
20. 05/20/08 - Completed the Treasure Island Addressing Project
21. 06/2008 - Completion of Treasure Island Playground Project.



RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT



TREASURE ISLAND DEVELOPMENT AUTHORITY
PROJECT ACHIEVEMENTS
PROJECT: TREASURE ISLAND REDEVELOPMENT PROJECT
July 1, 2007 - June 30, 2008

FISCAL YEAR 2007-2008 REDEVELOPMENT ACCOMPLISHMENTS

1. Community outreach efforts continued including staffing the TI/YBI CAB and participating with the Treasure Island Restoration Advisory Board (facilitated by the Navy with a specific interest in the cleanup efforts), and holding public workshops and making presentations to the Board of Supervisors Land Use and Economic Development Committee.
2. Representatives from the Office of Joint Development, Treasure Island Project Office, and the Office of the City Attorney continued the important independent monitoring of the Navy's environmental remediation efforts.
3. Working through the San Francisco County Transportation Authority and Caltrans, completed preparation of a Project Study Report for new ramps connecting Yerba Buena Island to the new Eastern Span of the Bay Bridge.
4. Initiated the process of project specific environmental review under CEQA for the proposed Development Plan, specifically by publishing the Notice of Preparation in partnership with the Planning Department's Major Environmental Analysis division.
5. Reinitiated the process of adopting a Redevelopment Plan under California Redevelopment Law for the proposed Development Plan.
6. Submitted Amended and Restated Economic Development Conveyance application to US Navy to support transfer of Naval Station Treasure Island.
7. Completed first phase of Design for Development by refining the land use plan to better integrate the intermodal transit hub, mixed-use commercial core and the adaptive reuse of Buildings 1, 2 and 3.
8. Worked with MUNI, WETA, AC Transit, Caltrans, MTC, BTH as first phase of implementation of Transportation Plan.
9. Governor signed SB 815 authorizing Trust Exchange boundaries consistent with the Development Plan and Term Sheet.
10. Work with Caltrans to complete construction of two new submarine cables serving Treasure Island based on a Memorandum of Understanding between TIDA and Caltrans.



RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT

TREASURE ISLAND PROJECT OFFICE
FY 2008-2009 OPERATIONS GOALS

1. Plan and execute Island-wide tabletop exercises and drills in support of the TI Emergency Operation Plan, including identification of proper roles of on-Island entities and community organizations post-disaster
2. Completion and activation of redesigned TIDA website
3. Completion of Clipper Cove legislation project allowing for enforcement including creation of set of rules and regulations for boaters and marine activity in the area and shoreline access to Treasure Island
4. TIDA -MOU with the Controller's Office to conduct an audit of the TIDA-John Stewart Company Agreement
5. Fogwatch pavilion project
6. Treasure and Yerba Buena Island street lighting improvement project in the residential areas
7. Completion and establishment of Treasure Island History Society project
8. Begin collecting Golden Gate International Exposition oral histories and necessary outreach
9. Coordinate planning of events surrounding Golden Gate International Exposition 70th Anniversary
10. Exhibit Miguel Covarrubias murals in Bay Area
11. Finalize response to NHC for care and maintenance of Treasure Island Museum Collection
12. Create a "Welcome Package" for all new commercial tenants to assist them in transitioning to the island.
13. Direct YMCA to assess the current and future needs of the Island residents and adjust recreational programs accordingly
14. Renovation and roof repairs of historic properties
15. Conduct NERT Training for residents and commercial tenants
16. Demolition of Building 92 and Building 7
17. Vegetation Management Project

18. Creation of Treasure Island Gardens and Event Center
19. MOU with the PUC to settle TIDA's outstanding liabilities
20. Create two new athletic fields



RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT

TIDA FISCAL YEAR 2008-2009 REDEVELOPMENT GOALS

1. Negotiate term sheet agreement with US Navy for conveyance of former Naval Station Treasure Island to the Authority.
2. Prepare and publish Preliminary Plan and Draft Redevelopment Plan, and initiate the process of amending the San Francisco General Plan, Planning Code and Zoning Map consistent with redevelopment project.
3. Work with the San Francisco Planning Department to prepare and publish the Draft EIR.
4. Successfully obtain legislation creating a Treasure Island Transportation Management Agency and authorizing the implementation of a transportation management program that includes congestion pricing, and parking fees and a transit pass program, all subject to approval of the Board of Supervisors.
5. Work with the San Francisco Public Utilities Commission to: (i) prepare a Master Wastewater System Plan and a Master Recycled Water Plan for Treasure Island and to include its financing, construction and operation in the PUC's Sewer System Master Plan; (ii) continue to evaluate how to maximize renewable energy generation on Treasure Island; and (iii) prepare Infrastructure Master Plans and tentative map submittals for water, sanitary sewer, recycled water, stormwater, central plant, and dry utilities.
6. Work with the San Francisco Department of Environment and TIDC to prepare and publish a Habitat Management Plan for Yerba Buena Island.
7. Work with the State Lands Commission to prepare and approve an Exchange Agreement for Public Trust Lands on Treasure Island and Yerba Buena Island.
8. Work with the San Francisco County Transportation Authority to select a consultant team and initiate work on a Draft Project Report and Environmental Document for the Yerba Buena Island Ramps replacement project.
9. Work with TIDC and various stakeholders to continue to implement the redevelopment plans (including the Infrastructure Master Plans, the Transportation Plan and the Sustainability Plan) for Treasure Island in furtherance of a final Disposition and Development Agreement, through the extensive public planning process.
10. Work with TIDC and urban design consultants to prepare a Design for Development document that codifies urban design guidelines and development standards that will apply to all development on Treasure Island.
11. Continue to work with Job Corps and US Coast Guard on issues related to infrastructure improvements, access, and municipal services.
12. Continue to monitor the Navy's ongoing environmental cleanup program.



CITY & COUNTY OF SAN FRANCISCO

TREASURE ISLAND DEVELOPMENT AUTHORITY
410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND



MIRIAN SAEZ
DIRECTOR OF ISLAND OPERATIONS

Memorandum

TO: Treasure Island Development Authority, Board of Directors

FROM: Mirian Saez, Director of Island Operations

RE: FY2008/09 Capital Expenditure Plan For The Villages at Treasure Island

Date: March 24, 2008

The John Stewart Company (JSCO), dba The Villages at Treasure Island, provides property management services to 578 residential units on Treasure Island and Yerba Buena Island. Among the services provided by JSCO are general maintenance and capital repairs to keep the residential units in safe and habitable condition.

In accordance with the terms of the JSCO Sublease Agreement, the Replacement Reserve Account is funded from Gross Revenues at a rate of \$20 per month per rentable unit up to a maximum of \$1,000 per rentable unit. Since JSCO manages 578 units for the Authority, the Replacement Reserve Account is funded at a rate of \$138,720 per year. Current funds available in the Replacement Reserve Account total \$500,363.

Per the Sublease Agreement, JSCO is responsible for developing a schedule for maintaining the residential units based upon an assumed useful life for each rentable unit of seven years along with each annual budget.

At the direction of the Director of Island Operations, JSCO has identified and prioritized capital needs for residential buildings within its portfolio. Based on this review, JSCO has concluded that approximately \$5,703,869 (which includes inflation projected at 3.5% annually) will be needed over the next seven years to address interior unit turnover costs and costs for exterior repairs and replacement of building systems. Total FY 2008/09 costs for interior and exterior work are projected to be \$730,037.

Interior unit turnover costs include costs for replacement of appliances, carpets, window coverings, painting and repairs associated with ordinary wear and tear. Interior unit turnover costs over the next seven year term are projected to total \$3,152,235. FY 2008/09 costs are projected to be \$405,203. These costs will be paid for from the Operating Account.

Costs for exterior repairs and replacements of building systems include costs for repairs to roofs, windows, siding and fences as well as replacement of boilers, hot water heaters and furnaces that have outlived their useful life. These costs are projected to total \$2,551,634 over the next seven years. Total FY 2008/09 costs are projected to be \$324,835. These costs will be paid for from the Replacement Reserve Account.

While the JSCO Sublease Agreement allows interior unit turnover costs and costs associated with exterior repairs and replacement of building systems to be paid for from the Replacement Reserve Account, funds available from this account will be inadequate to meet all—interior as well as exterior—anticipated needs. In order to cover this gap, JSCO and Project Staff recommend that annual contributions to the Replacement Reserve Account be increased from \$138,720 to \$277,440 to pay for all exterior repairs and replacement of building systems. By doubling the annual contributions to the Replacement Reserve Account, all costs associated with exterior repairs and replacement of building systems over the next seven years are projected be met.

(Please note that when Treasure Island and Yerba Buena Island are sold to a Master Developer and the Sublease Agreement is terminated, all funds remaining in the Replacement Reserve Account will be paid to the Authority.)

In anticipation of the impact these costs will have on the ongoing financial condition of the project during FY 2008/09, Project Staff and the John Stewart Company will provide the Board routine updates on unit turnover costs and costs for exterior repairs and replacements of building systems. These reports will provide the Board updates on the costs as well as allocation of the expenditures and their anticipated impact on project operations.

The Villages at Treasure Island
Seven Year Sources and Uses Projection of Prioritized Capital Expenditures

Prepared by The John Stewart Company

May 6, 2008

Current Replacement Costs							Expenditures						
ITEM	TOTAL QUAN	UNIT	UNIT COST	CURRENT REPL COST	EST LIFE	EST REM LIFE	1	2	3	4	5	6	7
FISCAL YEAR							2008	2009	2010	2011	2012	2013	2014
RITY USES OF FUNDS													
Treasure Island													
EXTERIOR													
Re-roofing	254	du	\$ 2,000	\$ 508,000	20	0-7	\$ 74,520	\$ 100,895	\$ 104,219	\$ 71,146	\$ 73,637	\$ 76,214	\$ 78,881
Gutters + Downspouts	42	du	\$ 400	\$ 16,800	15	0-7	\$ 3,726	\$ 4,499	\$ 4,657	\$ 5,508			
Window Replacement	36	ea	\$ 500	\$ 17,500	20	0-7	\$ 2,588	\$ 5,624	\$ 5,821	\$ 5,164			
Sliding Glass Door Replace	21	ea	\$ 3,000	\$ 63,000	20	0-7	\$ 9,315	\$ 9,541	\$ 9,979	\$ 10,328	\$ 10,689	\$ 11,063	\$ 11,451
Exterior Repainting	13	ea	\$ 6,000	\$ 78,000	5	0-7	\$ 18,630	\$ 19,282	\$ 19,957	\$ 20,655	\$ 21,378	\$ 22,127	\$ 22,901
Fence Rebuild	139	du	\$ 3,000	\$ 417,000	15	0-7	\$ 114,885	\$ 89,983	\$ 93,132	\$ 40,450	\$ 41,856	\$ 43,331	\$ 44,848
SYSTEMS													
Boiler Replacement	18	bldg	\$ 25,000	\$ 450,000	30	0-7	\$ 77,825	\$ 80,342		\$ 93,236	\$ 96,500	\$ 99,877	\$ 103,373
Hot Water Heater Replacement	32	du	\$ 1,250	\$ 40,000	12	0-7	\$ 9,056	\$ 4,017	\$ 2,772	\$ 10,941	\$ 10,392	\$ 10,758	
Furnace Replacement	100	du	\$ 3,500	\$ 350,000	30	0-7	\$ 14,490	\$ 29,994	\$ 31,044	\$ 90,327	\$ 83,138	\$ 86,048	\$ 89,050
TI Subtotal				\$ 1,940,300			\$ 324,835	\$ 344,077	\$ 271,580	\$ 396,855	\$ 337,600	\$ 349,416	\$ 350,513
Yerba Buena Island													
EXTERIOR													
Re-roofing	33	du	\$ 2,000	\$ 66,000	20	0-7				\$ 18,934	\$ 19,597	\$ 20,283	\$ 20,993
Gutters + Downspouts	27	du	\$ 400	\$ 10,800	15	0-7				\$ 3,998	\$ 5,207	\$ 3,319	\$ 3,435
Window Replacement	0	ea	\$ 500	\$ -	20	0-7							
Sliding Glass Door Replace	0	ea	\$ 3,000	\$ -	20	0-7							
Exterior Repainting	0	ea	\$ 6,000	\$ -	5	0-7							
Deck & Railing Repair	7	ea	\$ 3,500	\$ 24,500	15	0-7				\$ 7,029	\$ 7,275	\$ 7,529	\$ 7,793
Fence Rebuild	9	du	\$ 3,000	\$ 24,000	15	0-7				\$ 6,865	\$ 7,125	\$ 7,376	\$ 7,634
SYSTEMS													
Boiler Replacement	0	bldg	\$ 25,000	\$ -	30	0-7							
Hot Water Heater Replacement	5	du	\$ 1,250	\$ 7,500	12	0-7				\$ 2,152	\$ 2,227	\$ 2,305	\$ 2,386
Furnace Replacement	16	du	\$ 3,500	\$ 56,000	30	0-7				\$ 18,073	\$ 18,706	\$ 19,361	\$ 20,038
YBI Subtotal				\$ 195,800						\$ 56,171	\$ 58,137	\$ 60,172	\$ 62,278
Total Current Replacement Costs \$ 2,136,100													
Total Capital Expenditures Years 1-7 (incl. inflation)				\$ 2,551,635			\$ 324,835	\$ 344,077	\$ 271,580	\$ 393,027	\$ 395,737	\$ 409,588	\$ 412,791
ROES OF FUNDS													
RESERVE FOR REPLACEMENT													
Annual Reserve Deposit							\$ 138,720	\$ 138,720	\$ 138,720	\$ 138,720	\$ 138,720	\$ 138,720	\$ 138,720
Supplemental Reserves	Additional Annual Reserve Contribution						\$ 138,720	\$ 138,720	\$ 138,720	\$ 138,720	\$ 138,720	\$ 138,720	\$ 138,720
Prior Years Reserve Balance							\$ 500,363	\$ 472,413	\$ 424,522	\$ 447,931	\$ 350,478	\$ 247,879	\$ 128,864
Total Reserves							\$ 777,803	\$ 749,853	\$ 701,962	\$ 725,371	\$ 627,918	\$ 525,319	\$ 406,304
Annual Interest							\$ 19,445	\$ 18,746	\$ 17,549	\$ 18,134	\$ 15,699	\$ 13,133	\$ 10,158
Resv Distribution (expenditure)							\$ 324,835	\$ 344,077	\$ 271,580	\$ 393,027	\$ 395,737	\$ 409,588	\$ 412,791
Ending Reserve Balance							\$ 472,413	\$ 424,522	\$ 447,931	\$ 350,478	\$ 247,879	\$ 128,864	\$ 3,671
Reserve Amount per Unit							\$ 850	\$ 764	\$ 806	\$ 630	\$ 446	\$ 232	\$ 7
Notes and Assumptions:													
1 Assumes initial March 2008 reserve balance of				\$ 500,363									
2 Assumes annual reserve contribution of				\$ 138,720									
3 Assumes an earned interest rate on the reserve balance of				2.50%									
4 Assumes an annual compounded inflation rate of				3.50%									
5 Assumes reserve contribution compounded annually at rate of				0.00%									
6 Number of units				556									
7 Number of buildings				103									
8 Expected life of project (years)				7									
9 Priority items are health, habitability and building envelope integrity													
10 Cost estimates are based on historical actual replacement costs at TI													
11 Replacement and costs are delayed as long as possible without compromising health & habitability													
12 The single large boiler on YBI that serves 22 units is relatively new and not expected to need replacement													
13 Any operating surplus will become part of "net profit" subject to distribution as % rent income to TIDA													

AGENDA ITEM 11
Treasure Island Development Authority
City and County of San Francisco
Meeting of May 14, 2008

Subject: Resolution Authorizing the Demolition and Removal of Building 227, the "Fog Watch" located on Treasure Island
Contact: Richard A. Rovetti, Leasing Manager
Phone: 415-274-3365

BACKGROUND

The Treasure Island Development Authority (the "Authority") is requesting approval for the demolition and removal of Building 227, the "Fog Watch" located on Treasure Island.

Building 227 is approximately 13,200 square feet of restaurant space constructed in 1944. This building has suffered irreparable damage due to decades of deterioration, deferred maintenance and vandalism. Authority staff has received an estimate from the Department of Public Works (DPW) to repair this building in the amount of \$590,296.70. The repairs outlined in DPW's estimate only address a cosmetic make over of this facility. The foundation, concrete slab and structural members of the building will continue to deteriorate even if the Authority performs the above mentioned repairs. Therefore, Authority staff recommends Building 227 be demolished and replaced with a new concrete pad to enable the installation of a temporary special events pavilion. This new pavilion will provide additional revenue to the Authority as well as enhance the western waterfront area of Treasure Island. In June 2008, Authority staff plans to request Board's approval of a Sublease for the pavilion.

In June 2008, the Authority plans to begin the demolition and removal of Building 227. Authority staff has received an estimate from DPW for this work in the amount of \$92,000.00. Staff plans to use existing funds from fiscal year 2007/2008 DPW's Maintenance budget to complete this project.

The Authority has received approval from the United States of America, acting by and through the Department of the Navy to demolish and remove Building 227 in accordance with the terms of Event Venues Lease Number N6247498RP00Q03.

RECOMMENDATION

Authority staff recommends that the Authority Board of Directors approve the proposed request to demolish and remove Building 227, and authorize the Director of Island Operations or her designee to issue a notice to proceed to DPW.

EXHIBIT

Exhibit A: Pictures of Building 227

Exhibit B: Approval letter from the Department of the Navy

Prepared by: Richard A. Rovetti, Leasing Manager

For: Mirian Saez, Director of Island Operations

1 [Demolition and Removal of Building 227]

2 **Resolution Authorizing the Demolition and Removal of Building 227, the "Fog Watch"**
3 **located on Treasure Island.**

4 WHEREAS, Former Naval Station Treasure Island is a military base located on
5 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by
6 the United States of America, acting by and through the Department of the Navy (the "Navy");
7 and,

8 WHEREAS, The Base was selected for closure and disposition by the Base
9 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
10 subsequent amendments; and,

11 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
12 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
13 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
14 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
15 conversion of the Base for the public interest, convenience, welfare and common benefit of
16 the inhabitants of the City and County of San Francisco; and,

17 WHEREAS, On September 4, 1998, the Authority entered into Event Venues Lease
18 Number N6247498RP00Q03 (the "Event Venues Lease") with the Navy for use of certain real
19 property located at the Base; and,

20 WHEREAS, Building 227, also known as the "Fog Watch," is approximately 13,200
21 square feet of restaurant space constructed in 1944 and is included in the leased premises
22 under the Events Venue Lease; and,

23 WHEREAS, Building 227 has suffered irreparable damage due to decades of
24 deterioration, deferred maintenance and vandalism and the Department of Public Works
25 ("DPW") estimated that it would cost approximately \$590,296.70 to repair Building 227; and,

WHEREAS, Authority staff originally budgeted \$317,085 to renovate Building 227 but now realizes the improvements will not address the continual deterioration of the building's foundation, concrete slab and structural members; and,

WHEREAS, Authority staff recommends that Building 227 be demolished and replaced with a new concrete pad to enable the installation of a temporary special events pavilion that will provide additional revenue to the Authority as well as enhance the western waterfront area of Treasure Island; and,

WHEREAS, Authority staff has received an estimate from DPW in the amount of \$92,000 to demolish Building 227 beginning June 2008 using existing funds from DPW's 2007/2008 Maintenance Budget for the Authority; and,

WHEREAS, The Authority has received approval from the United States of America acting by and through the Department of the Navy, to demolish and remove Building 227 in accordance with the terms of Event Venues Lease Number N6247498RP00Q03; now therefore, be it

RESOLVED, That the Board of Directors hereby approves the demolition and removal of Building 227 and authorizes the Director of Island Operations or her designee to issue a notice to proceed to DPW to commence demolition.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on May 14, 2008.

Owen Stephens, Secretary

cut
g's
ed
na
ea
d
/s
ca
in
va
a
2
8













Item 11- Ex. B



DEPARTMENT OF THE NAVY
BASE REALIGNMENT AND CLOSURE
PROGRAM MANAGEMENT OFFICE WEST
1455 FRAZEE RD, SUITE 900
SAN DIEGO, CA 92108-4310

11011
Ser BPMOW.eal/0443
MAY 8 2008

Mr. Rich Rovetti
Treasure Island Development Authority
410 Avenue of the Palms
Bldg. One, 2nd Floor, Treasure Island
San Francisco, CA 94130

Dear Mr. Rovetti:

Thank you for your letter dated April 23, 2008 requesting approval to demolish Buildings 7, 92, and 227 on Treasure Island. After careful review of your request, we concur that the demolition of these buildings is necessary due to potential health and safety issues and agree that in their current state they present an attractive nuisance.

We understand that TIDA has budgeted for the demolition of these three buildings in your upcoming fiscal year which begins July 1, 2008.

We authorize you to demolish Building 227, in accordance with the terms of Lease N6247498RP00Q03.

In order to allow the demolition of Buildings 7 and 92, we request that you add the two buildings to Lease N6247499RP42P12, commonly known as the Land & Structures Lease. Once the parties have executed the amendment, you would be authorized to demolish the buildings in accordance with the terms of that lease.

Additionally, we require a preconstruction conference with our Caretaker Site Office and Mr. James Sullivan our Base Environmental Coordinator prior to the work being accomplished. Specific items to be addressed will be utilities, lease provisions, and applicable federal, state and local laws and regulations regarding hazardous substance/waste handling and removal.

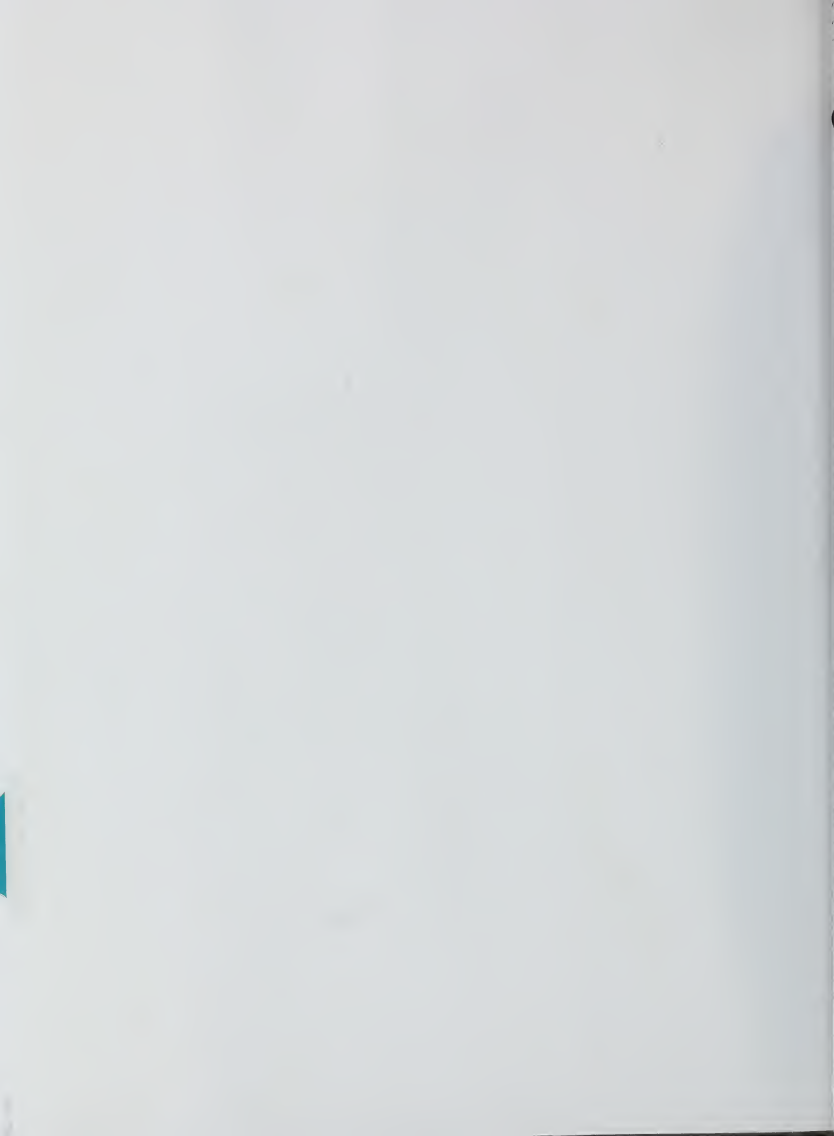
Please direct all questions or concerns to me at (619) 532-0788.

Sincerely,

A handwritten signature in cursive script, reading "Elizabeth A. Larson", is written over the typed name.

ELIZABETH A. LARSON
Real Estate Contracting Officer





AGENDA ITEM 12
Treasure Island Development Authority
City and County of San Francisco
Meeting of May 14, 2008

Subject: Resolution authorizing the First Amendment to the Sublease between the Treasure Island Development Authority and California Logistics, LLC, a California Limited Liability Corporation, to retroactively decrease the square footage of the Premises, decrease the rent, conditionally waive penalties and delinquency charges and extend the term on a Month-to-Month basis through and no later than June 30, 2008.
(*Action Item*)

Contact: Mirian Saez, Director of Island Operations

Phone: (415) 274-0660

BACKGROUND

California Logistics, LLC, a California Limited Liability Corporation (hereafter referred to as "Subtenant"), entered into two Subleases with the Treasure Island Development Authority (hereafter referred to as the "Authority") on December 13, 2006, for approximately 65,485 square feet of warehouse space in Building 180 at 200 California Avenue, Treasure Island.

The first Sublease (the "North Sublease") for the North portion of Building 180 consisted of approximately 41,509 square feet with a Base Rent of \$8,301.20 (\$0.20psf) per month. Subtenant terminated its tenancy of the North Sublease premises in December of 2007.

The second Sublease (the "Sublease") for the South portion of Building 180 consists of approximately 23,976 square feet with a Base Rent of \$4,759.20 (\$0.20 psf) per month. The Subtenant has used this facility for bulk warehousing and storage and as a customs bonded warehouse.

During the term of the Subleases, the Subtenant has suffered financial setbacks that it attributes to mismanagement and an inadequate customer base.

Delinquent Rent

The Subtenant did not pay Base Rent for the Sublease premises for the months of December 2007, January 2008 and February 2008. In accord with the terms of the Sublease, Delinquent Rent plus Late Fees and Default Interest of \$ 15,284.07 accrued for that period.

In January 2007, the Subtenant informed Project Staff that it disputed the square footage of the Sublease premises. The Subtenant objected to the inclusion of the approximately 1,600 square foot stage/storeroom that had been left in the premises by a prior subtenant. Subtenant asserted the area was not usable for bulk warehousing. In February, the Subtenant asserted that the Base

Rent it should pay for the reduced premises is \$4,475.20 per month instead of the \$4,759 due under the Sublease.

For the months of March, April and May 2008, Subtenant paid partial Base Rent in the amount of \$4,475.20 per month. Delinquent Rent, Late Fees and Default Interest of \$995.55 have accrued for the period that the Subtenant has paid less than the amount required under the South Sublease.

On April 28, 2008, the Subtenant submitted a proposal to Project Staff (Exhibit A) to reduce the square footage of the South Sublease premises from 23,976 square feet to 22,376 square feet to reflect the stage space that was unusable by the Subtenant for bulk warehousing, retroactive to December 1, 2007; to reduce the rent from \$4,759.20 to \$4,475.20 to reflect the contractual rental rate of \$0.20 psf for the reduced square footage, also retroactive to December 1, 2007; to waive all Late Fees and Default Interest; and to terminate the subtenancy on June 30, 2008, with the opportunity to remain beyond June 30 to complete removal of personal property from the premises.

FINANCIAL IMPACT

As of May 14, 2008, the amount outstanding under the Sublease is \$17,259.95, representing \$15,130.20 in delinquent rent and \$2,129.75 in accumulated Late Charges and Default Interest. Acceptance of the Subtenant's proposal to reduce Base Rent to reflect reduced square footage would reduce accumulated outstanding Base Rent by \$1,704.60 from \$15,130.20 to \$13,425.60. The reduced revenue to the Authority under the proposal is \$3,834.35, including Base Rent adjustments and waiver of Late Charges and Default Interest.

Although Subtenant occupies the Sublease premises under a month-to-month Sublease that expired November 30, 2007, the Fiscal Year 2007-2008 Budget projected the Subtenant would remain in occupancy of all of Building 180 for the fiscal year, resulting in income of \$156,732. Acceptance of the Subtenant's proposal combined with loss of income associated with the Subtenant's reduction in space will result in FY 07-08 revenue of \$96,631 or \$60,101 less Base Rent than projected, not including the waiver of delinquency fees of \$2,129.75.

RECOMMENDATION

Project Staff has measured the Sublease premises and concluded that the premises occupied by the Subtenant that are usable as a bulk warehouse facility are 1,600 square feet less than the area shown in the Sublease, or 22,376 square feet. Project Staff recommends acceptance of Subtenant's proposal to reduce the square footage of the premises.

Project Staff recommends acceptance of the Subtenant's proposal to reduce the Base Rent for the Sublease premises to reflect the reduction in square footage. The resulting Base Rent for the Sublease premises will be \$4,475.20 per month.

Project Staff recommends that the adjustment of the square footage and the Base Rent for the Sublease premises be retroactive to December 1, 2007. The resulting adjustment will reduce the

Subtenant's rental obligation to allow the contract rate of \$0.20 psf to be applied to the usable square footage occupied by the Subtenant.

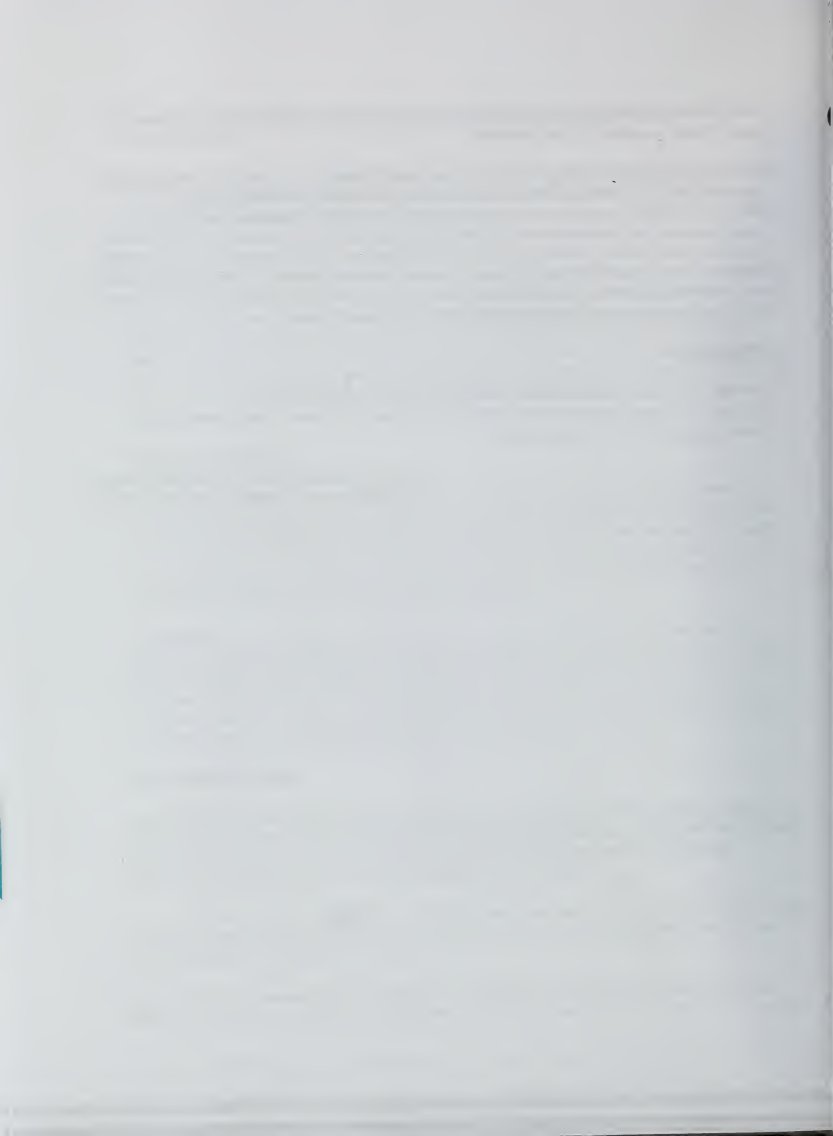
The Subtenant has provided benefit to Treasure Island. It has provided employment and training opportunities for 22 Treasure Island residents through the Treasure Island Homeless Development Initiative and provided a substantial public benefit to the community. In consideration of the benefits provided by the Subtenant, Project Staff recommends a conditional waiver of Late Fees and Default Interest under the Sublease in the amount of \$2,129.75, subject to Subtenant vacating the South Sublease Premises prior to or on June 30, 2008 and not being in default under the Sublease. Subtenant has provided the Authority a Security Deposit of Twenty Thousand Dollars and 00/100 (\$20,000.00) as security against default.

EXHIBITS:

EXHIBIT A - Letter from Paul Mori, Atty at Law, dated April 28, 2008.

EXHIBIT B - First Amendment to the Sublease between the Treasure Island Development Authority and California Logistics, LLC

Prepared by Marc McDonald, Facilities Manager
For Mirian Saez, Director of Island Operations



1 [Amendment to South Hangar Sublease with California Logistics]

2 **RESOLUTION AUTHORIZING THE FIRST AMENDMENT TO THE SUBLEASE BETWEEN**
3 **THE TREASURE ISLAND DEVELOPMENT AUTHORITY AND CALIFORNIA LOGISTICS,**
4 **LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION, TO RETROACTIVELY**
5 **DECREASE THE SQUARE FOOTAGE OF THE PREMISES, DECREASE THE RENT,**
6 **CONDITIONALLY WAIVE PENALTIES AND DELINQUENCY CHARGES, AND EXTEND**
7 **THE TERM ON A MONTH-TO-MONTH BASIS THROUGH AND NO LATER THAN JUNE**
8 **30, 2008.**

9 **WHEREAS,** Former Naval Station Treasure Island is a military base located on
10 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by
11 the United States of America, acting by and through the Department of the Navy (the "Navy");
12 and,

13 **WHEREAS,** The Base was selected for closure and disposition by the Base
14 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
15 subsequent amendments; and,

16 **WHEREAS,** On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
17 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
18 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
19 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
20 conversion of the Base for the public interest, convenience, welfare and common benefit of
21 the inhabitants of the City and County of San Francisco; and,

22 **WHEREAS,** Under the Treasure Island Conversion Act of 1997 (the "Act"), which
23 amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to
24 Chapter 1333 of the Statutes of 1968, the California legislature (i) designated the Authority as
25

1 a redevelopment agency under California redevelopment law with authority over the Base
2 upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the
3 Base which are subject to the Tidelands Trust, vested in the Authority the authority to
4 administer the public trust for commerce, navigation and fisheries as to such property; and,

5 **WHEREAS**, The Authority and the United States of America, acting by and through the
6 Department of the Navy entered into Master Lease (Lease No. N624798RP00P99), as
7 amended for use of certain property, including Building 180 on Treasure Island; and,

8 **WHEREAS**, The Master Lease enables the Authority to sublease the leasehold
9 premises for interim use; and,

10 **WHEREAS**, On December 15, 2006, California Logistics, LLC, (the "Subtenant")
11 entered into a Sublease with the Authority for 23,976 square feet in the South Hangar of
12 Building 180 (the "South Hangar") for \$4,759.20 NNN per month on a month-to-month basis
13 as well as the parking lot adjacent to the east side of Building 180 on a non-exclusive basis for
14 the short term storage of equipment at a rate of \$100 per day of actual occupancy beginning
15 December 15, 2006 and expiring on November 30, 2007; and,

16 **WHEREAS**, The Subtenant was 30 days delinquent in payment of Base Rent for the
17 South Hangar for each of the months of September, October, November 2007 resulting in
18 Default Interest and Late Fees of \$1,697.19; and,

19 **WHEREAS**, The Subtenant has not paid Base Rent for the South Hangar for each of
20 the months of December 2007, and January and February 2008 resulting in Delinquent Rent
21 of \$14,277.60 plus Default Interest and Late Fees of \$1,006.47; and,

22 **WHEREAS**, For the months of March, April and May, 2008, the Subtenant submitted
23 \$4,475.20 per month, which is less than the \$4,759.20 per month Base Rent required under
24
25

1 the terms of the Sublease, and in accord with the terms of the Sublease, Delinquent Rent of
2 \$852.60, plus Late fees and Default Interest \$142.95 have accrued for such period; and,

3 **WHEREAS**, On April 28, 2008, the Subtenant submitted a proposal to Project Staff to
4 reduce the premises described as the South Hangar from 23,976 square feet to 22,376
5 square feet, or 1,600 square feet, to reflect the space that is usable by the Subtenant for its
6 bulk warehousing purposes; to reduce the Base Rent from \$4,759.20 NNN per month to
7 \$4,475.20 NNN per month to reflect the contractual rental rate of \$0.20 psf for the reduced
8 square footage, to waive all Late Fees and Default Interest, and to terminate the subtenancy
9 on June 30, 2008, with the opportunity to remain beyond June 30, 2008 to complete removal
10 of personal property from the premises; and,

11 **WHEREAS**, Project Staff has measured the South Hangar premises subleased to
12 Subtenant and concluded that 22,376 square feet, and not 23,976 square feet, of the
13 premises are usable by the Subtenant for bulk warehousing purposes; and,

14 **WHEREAS**, A reduction in the square footage of the premises as requested by the
15 Subtenant will result in a reduction of Base Rent from \$4,759.20 to \$4,475.20; and,

16 **WHEREAS**, Subtenant has further requested that the reduction in the square footage
17 and the Base Rent be effective retroactively on December 1, 2007; and,

18 **WHEREAS**, Project Staff recommends that the reduction in the square footage and the
19 Base Rent be effective retroactively to December 1, 2007, the approximate date that
20 Subtenant consolidated its operations to the South Hangar; **NOW, THEREFORE, BE IT**

21 **RESOLVED**, That the Board of Directors hereby finds and determines as follows:

- 22 1. That the square footage of the premises subleased to the Subtenant shall be
23 reduced 1,600 square feet from 23,976 square feet to 22,376 square feet; and
- 24 2. That such reduction in square footage shall result in a reduction of the monthly Base
25 Rent from \$4,759.20 NNN per month to a new Base Rent of \$4,475.20 NNN per month to

1 reflect the contractual rental rate of \$0.20 psf for that portion of the premises subleased to the
2 Subtenant; and,

3 3. That such reduction in square footage and the consequent reduction in Base Rent
4 shall be retroactive to December 1, 2007; and,

5 4. That the Subtenant has provided substantial benefits to the Treasure Island
6 community through its community outreach and its success in hiring and training Treasure
7 Island residents in warehousing and handling warehousing equipment and that as
8 consideration for providing such benefits, Default Interest and Late Fees accrued prior to
9 December 1, 2007, and Late Charges and Default Interest accrued for the months of
10 December 2007, January 2008, February 2008, March 2008, April 2008 and May 2008 be
11 conditionally waived subject to Subtenant surrendering the premises in accordance with the
12 terms of the Sublease prior to or on June 30, 2008 and not being in default under the
13 sublease; and,

14 5. That the Subtenant proposal to extend the term to June 30, 2008 shall be accepted,
15 on the condition that the Subtenant agree that the final date of occupancy of the premises
16 shall be June 30, 2008; and,

17 6. That the above terms have been incorporated into a First Amendment to Sublease in
18 substantially the form attached hereto as Exhibit A; and,

19 7. That the proposed First Amendment to the Sublease will serve the goals of the
20 Authority and the public interests of the City; and,

21 8. That the terms and conditions of the proposed First Amendment to the Sublease are
22 fair and reasonable; and be it

23 **FURTHER RESOLVED**, That the Board of Directors authorizes the Director of Island
24 Operations or her designee to execute the First Amendment to Sublease with California
25 Logistics, LLC, in substantially the form attached as Exhibit A; and be it

FURTHER RESOLVED, That the Board of Directors hereby authorizes the Director of Island Operations or her delegate to enter into any additions, amendments or other modifications to the First Amendment to Sublease that the Director of Island Operations determines in consultation with the City Attorney are in the best interests of the Authority, that do not materially increase the obligations or liabilities of the Authority, that do not materially reduce the rights of the Authority, and are necessary or advisable to complete the preparation and approval of the First Amendment to Sublease, such determination to be conclusively evidenced by the execution and delivery by the Director of Island Operations or her delegate of the documents and any amendments thereto.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors at a properly noticed meeting on May 14, 2008.

Owen Stephens, Secretary

ITEM 12 – EXHIBIT A

FIRST AMENDMENT TO SUBLEASE

between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

CALIFORNIA LOGISTICS, LLC
as Subtenant

For the Sublease of

A Portion of the South Hangar of Building 180

At

50 Avenue C

Naval Station Treasure Island

San Francisco, California

May , 2008

ITEM 12 – EXHIBIT A

FIRST AMENDMENT TO TREASURE ISLAND SUBLEASE

THIS FIRST AMENDMENT TO SUBLEASE (the "First Amendment"), dated as of the ____ day of May, 2008, is by and between the Treasure Island Development Authority ("Sublandlord") and California Logistics, LLC, a California Limited Liability Corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This First Amendment is made with reference to the following facts and circumstances:

- A. On December 15, 2006, the Parties entered into that certain Sublease (the "Original Sublease") whereby Sublandlord subleased to Subtenant approximately 23,976 square feet in Building 180 at 50 Avenue C on Treasure Island, San Francisco, California. Capitalized terms that are not defined in this First Amendment shall have the meanings set forth in the Sublease.
- B. The term of the Original Sublease expired November 30, 2007 and Subtenant has been holding over on a month-to-month basis since that date.
- C. Subtenant and Sublandlord desire to amend the Sublease to retroactively decrease the square footage of the Premises, decrease the Base Rent, conditionally waive Late Charges and Default Interest incurred to date, and extend the term of the Sublease on a month-to-month basis through June 30, 2008, on the terms and conditions set forth in this First Amendment.
- D. On May 14, 2008, the Authority's Board of Directors authorized the Director of Island Operations to enter into this First Amendment.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

- 1. Reduced Square Footage of Premises. Effective retroactively as of December 1, 2007, the square footage of the Premises as set forth in Section 1.1(a) of the Sublease is hereby reduced to approximately 22,376 square feet to reflect the unusable condition of the stage area in the Premises.
- 2. Term of Sublease. The term of the Sublease as set forth in Section 3.1 of the Sublease is hereby extended on a month-to-month basis through June 30, 2008. Either Party may, in its sole and absolute discretion, terminate this Sublease by giving at least thirty (30) days' prior written notice to the other party.
- 3. Reduced Base Rent. Effective retroactively as of December 1, 2007, the Base Rent payable under Section 4.1 of the Sublease is hereby reduced to Four Thousand Four Hundred Seventy Five and 20/100 Dollars (\$4,475.20) to reflect the reduction in the

ITEM 12 – EXHIBIT A

square footage of the Premises described in Section 1 of this First Amendment. Subtenant shall pay delinquent Base Rent for the months of December 2007, January 2008 and February 2008 in the amount of Four Thousand Four Hundred Seventy Five and 20/100 Dollars (\$4,475.20) per month prior to or on June 1, 2008.

4. Conditional Waiver of Late Charges and Default Interest. In consideration of the substantial benefits that Subtenant has provided to the Treasure Island community through its community outreach and its success in hiring and training Treasure Island residents in warehousing and handling warehousing equipment, Sublandlord conditionally agrees to waive Late Charges and Default Interest in the aggregate amount of \$2,142.33, representing \$980.32 that accrued prior to December 1, 2007, and \$1,149.42 that accrued for the months of December 2007, January 2008, February 2008, March 2008, April 2008 and May 2008. Notwithstanding the foregoing, the waiver of Late Charges and Default Interest is conditioned upon (i) Subtenant paying the delinquent Base Rent for the months of December 2007, January 2008 and February 2008 in the amount of Four Thousand Four Hundred Seventy Five and 20/100 Dollars (\$4,475.20) per month prior to or on June 1, 2008; (ii) Subtenant surrendering the Premises in the condition required under the Sublease prior to or on June 30, 2008; and (iv) Subtenant not being in default under the Sublease at any time prior to or on June 30, 2008. If any of the conditions specified in the prior sentence are not satisfied as of the date for satisfaction of such conditions, then the conditional waiver of Late Charges and Default Interest shall be of no further force and effect.

5. No Further Amendments. Except as expressly amended in this First Amendment, all other terms and conditions of the Sublease shall remain in full force and effect.

Sublandlord and Subtenant have executed this First Amendment in triplicate as of the date first written above.

SUBTENANT:

California Logistics, LLC,
a California Limited Liability Corporation

By: _____
Its: _____

SUBLANDLORD:

Treasure Island Development Authority

ITEM 12 – EXHIBIT A

By: _____

Its: Mirian Saez
Director of Island Operations

Approved as to Form:

DENNIS J. HERRERA,
City Attorney

By _____
Deputy City Attorney



[Establishing an Ad Hoc Nominating Committee.]

Resolution Establishing an Ad Hoc Nominating Committee, Consisting of Three Members of the Treasure Island Development Authority ("TIDA") Board of Directors Appointed by the President, to Nominate Members of the TIDA Board to Serve as Officers of the TIDA Board in Accordance With the TIDA Bylaws.

WHEREAS, Under the TIDA Bylaws, officers of the TIDA Board of Directors (the "Board") are to be chosen annually; and,

WHEREAS, The TIDA Bylaws allow the Board to create one or more committees consisting of two or more Directors to serve at the pleasure of the Board; and,

WHEREAS, The Board wishes to establish an ad hoc nominating committee to recommend for the Board's approval Directors to serve as officers of the Board for the next year; and,

WHEREAS, The Board wishes such ad hoc nominating committee to be comprised of three Directors appointed by the President of the Board; now, therefore, be it

RESOLVED, That the Board hereby establishes an ad hoc nominating committee to be comprised of three Directors appointed by the President of the Board; and, be it

FURTHER RESOLVED, That such nominating committee shall nominate Directors as candidates for the Board's consideration and election at a subsequent meeting of the Board, to serve as President, Vice President, Secretary, and Chief Financial Officer of the Board for the twelve (12) month period beginning July 1, 2008 and ending on June 30, 2009; and, be it

FURTHER RESOLVED, That the Board hereby urges any Directors who are interested in serving as an officer of the Board to submit their names to the Director of Island Operations for forwarding to the nominating committee for consideration; and, be it

1 FURTHER RESOLVED, That the Board recommends and urges the Director of Island
2 Operations to work with the members of the ad hoc nominating committee to establish a
3 meeting date, time, and place in accordance with the San Francisco Sunshine Ordinance and
4 the Ralph M. Brown Act at which meeting the ad hoc nominating committee will determine by
5 vote of the members of the ad hoc nominating committee which Directors to nominate as
6 officers of the Board as described hereinabove; and be it

7 FURTHER RESOLVED, That upon the Board's election of officers in accordance with
8 the TIDA Bylaws, the ad hoc nominating committee shall cease to exist.

9
10 **CERTIFICATE OF SECRETARY**

11 **I hereby certify that I am the duly elected Secretary of the Treasure Island**
12 **Development Authority, a California nonprofit public benefit corporation, and that the**
13 **above Resolution was duly adopted and approved by the Board of Directors of the**
14 **Authority at a properly noticed meeting on May 14, 2008.**

15
16
17 Owen Stephens, Secretary
18
19
20
21
22
23
24
25





CITY & COUNTY OF SAN FRANCISCO

TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND



GAVIN NEWSOM, MAYOR

DRAFT Minutes of Meeting
Treasure Island Development Authority
May 14, 2008

San Francisco City Hall
Room 400
San Francisco, CA

1. **Call to Order:** 1:38 PM

Roll Call Present: Claudine Cheng (Chair)
Fred Blackwell
Jared Blumenfeld
John Elberling
Matthew Franklin
John Rahaim
Owen Stephens

Excused: Supervisor Chris Daly

DOCUMENTS DEPT.

JUN - 9 2008

SAN FRANCISCO
PUBLIC LIBRARY

2. Report by Director of Island Operations

Ms. Mirian Saez, Director of Island Operations, provided an update on her schedule and activities on the Island within the past month. Discussed on-Island issues that staff is addressing and meetings held with on-Island entities and City departments within the previous month. New commercial tenants on the Island include the San Francisco Police Department motorcycle unit and Glide Memorial YouthBuild both moving into the Treasure Island School building. Discussed work on the Treasure Island Library to convert it to an event venue. Disclosed a venue fee which was waived for use of facilities by the Port of San Francisco. Discussed quality of life issues, including ongoing work on the Island Emergency Operations Plan, staff planning for the Golden Gate International Exposition 70th Anniversary celebration, and recent CalTrans striping of the on-ramp lane on either side of the Yerba Buena Island tunnel to allow for easier access onto the Bridge by motorists leaving the Island.

3. Report by the Office of Joint Development

Mr. Jack Sylvan, Office of Joint Development, discussed ongoing work Joint Development staff

is undertaking regarding Yerba Buena Island on and off ramps design and transfer. Stated that initial 3-Dimensional designs for the redevelopment plan are anticipated this summer. Stated that based on discussions with the Congressional delegation, language relating to Treasure Island and transfer is anticipated in the forthcoming Armed Services Appropriation Bill in Congress.

4. Communications

There was no discussion on this item.

5. Report by the Treasure Island/Yerba Buena Island Citizen Advisory Board

There was not a May CAB meeting, therefore no report was provided at this meeting.

6. Ongoing Business by Directors

There was no discussion during this item.

7. General Public Comment

Ms. Sherry Williams, TIHDI Executive Director, welcomed new Director Rahaim. Reported on the success of the volunteer income tax-assistance site established on Treasure Island with the aid of Island residents. Spoke in support of the June 7th on-Island Craft Faire.

Mr. Sal deGuarda, Mr. Bill Trimlin and Ms. Mona Lombard spoke in support of the Pacifica II project, which aims to rebuild the Ralph Stackpole "Pacifica" statue from the Golden Gate International Exposition on Treasure Island.

8. Consent Agenda

There was no Public Comment on the Consent Agenda.

Director Elberling motioned for approval.

Director Rahaim seconded the motion.

The Consent Agenda was approved unanimously.

9. Approval of the Treasure Island Development Authority FY2008-2009 Budget and Submittal for Inclusion in the City and County of San Francisco FY2008-2009 Budget

Ms. Mirian Saez, Director of Island Operations, presented the FY08-09 TIDA Budget for review and approval. Discussed anticipated expenses and revenues. Housing revenues are expected to decrease due to units being off-line for remediation work, while commercial revenues are to increase due to a more aggressive strategy for commercial leasing. Discussed staffing realignment anticipated in the budget, as well as capital expenditures and projects planned. Planned expenses include community benefit expenditures, City Department work orders, staffing realignment, activities related to the 70th Anniversary of the Golden Gate International Exposition and capital improvements to on-Island facilities. Director Elberling complimented the renewed emphasis on commercial leasing.

Director Franklin complimented Director of Island Operations Saez for providing a budget with a surplus.

There was no Public Comment on this item.

Director Franklin motioned for approval.
Director Elberling seconded the motion.
The item was approved unanimously.

Director Stephens joined the TIDA Board at 2:20 PM.

10. Presentation on Anticipated Capital Expenditures for the Treasure and Yerba Buena Islands Housing Units

Mr. Ned York, the John Stewart Company, presented the planned capital expenditures for the Treasure and Yerba Buena Islands housing units. The majority of the capital improvements made will be towards both the interiors and the exteriors of the units. Interior expenditures will include new appliances, carpets and painting. Exterior expenditures will include re-roofing, windows, boilers and hot-water heaters, amongst others. Discussed the anticipated costs of these repairs, as well as the method to be used for financing such repairs and the impact on John Stewart's Replacement Reserve Account.

Public Comment:

Ms. Sherry Williams, TIHDI Executive Director, spoke in support of John Stewart Company's previous participation in the TIHDI Job Broker Program and stated she is confident that this participation will continue with the new work planned.

Director Blackwell left the Board at 2:53 PM.

11. Authorizing the Demolition and Removal of Building 227, the Fogwatch Building
Mr. Rich Rovetti, TIDA Commercial Leasing Manager, presented this item authorizing the demolition of the Fogwatch Building, aka Building 227. Building 227 is approximately 13,200 square feet of restaurant space constructed in 1944 on the western shoreline of Treasure Island. This building has suffered irreparable damage due to decades of deterioration, deferred maintenance and vandalism. The foundation, concrete slab and structural members of the building will continue to deteriorate. Therefore, Authority staff recommends Building 227 be demolished and replaced with a new concrete pad to enable the installation of a temporary special events pavilion. This new pavilion will provide additional revenue to the Authority as well as enhance the western waterfront area of Treasure Island. In June 2008, Authority staff plans to request Board's approval of a Sublease for the pavilion. Staff has secured approval from the United States Navy and the San Francisco Planning Department for the demolition, and there is available funding in the current year DPW work order to fund the demolition.

There was no Public Comment on this item.

Director Blumenfeld motioned for approval.
Director Stephens seconded the motion.
The Consent Agenda was approved unanimously.

12. Authorizing an Amendment to the Sublease with California Logistics for Building 180

Mr. Marc McDonald, TIDA Facilities Manager, presented an item amending the sublease with California Logistics. During the term of the current Sublease, the Subtenant has suffered financial setbacks that it attributes to mismanagement and an inadequate customer base. On April 28, 2008, the Subtenant submitted a proposal to Project Staff to reduce the square footage of the South Sublease premises from 23,976 square feet to 22,376 square feet to reflect the stage space that was unusable by the Subtenant for bulk warehousing, retroactive to December 1, 2007; to reduce the rent from \$4,759.20 to \$4,475.20 to reflect the contractual rental rate of \$0.20 psf for the reduced square footage, also retroactive to December 1, 2007; to waive all Late Fees and Default Interest; and to terminate the sub tenancy on June 30, 2008, with the opportunity to remain beyond June 30 to complete removal of personal property from the premises. The Subtenant has provided benefit to Treasure Island. It has provided employment and training opportunities for 22 Treasure Island residents through the Treasure Island Homeless Development Initiative and provided a substantial public benefit to the community. In consideration of the benefits provided by the Subtenant, Project Staff recommends a conditional waiver of Late Fees and Default Interest under the Sublease in the amount of \$2,129.75, subject to Subtenant vacating the South Sublease Premises prior to or on June 30, 2008 and not being in default under the Sublease. Subtenant has provided the Authority a Security Deposit of Twenty Thousand Dollars and 00/100 (\$20,000.00) as security against default.

There was no Public Comment on this item.

Director Elberling motioned for approval of the item.

Director Rahaim seconded the motion.

The item was approved unanimously.

13. Establishing an Ad-Hoc Nominating Committee to Nominate Members of the TIDA Board to Serve as Officers of the TIDA Board

Director Cheng nominated Directors Blumenfeld, Blackwell and Franklin to serve on the Ad-Hoc Nominating Committee, and directed the Commission Secretary to work with the Committee to schedule a meeting time and location.

There was no Public Comment on this item.

Director Elberling motioned for approval of the item.

Director Stephens seconded the motion.

The item was approved unanimously.

14. Discussion of Future Agenda Items by Directors

Director Elberling requested an update on the Art Park proposal for the redevelopment plan.

Director Blumenfeld requested creation of an interim policy for display of public art on Treasure Island.

15. Closed Session for Conference with Real Property Negotiators

There was no public comment on the proposed Closed Session.

Director Rahaim motioned to move to closed session.

Director Franklin seconded the motion.

The TIDA Board went into Closed Session at 3:12 PM.

Closed Session Attendees

Jack Sylvan and Michael Tymoff, Office of Joint Development

Peter Summerville, Treasure Island Development Authority

Eileen Malley, Office of the City Attorney

The TIDA Board returned to Open Session at 3:45 PM.

Director Blumenfeld motioned not to disclose the Closed Session discussion.

Director Rahaim seconded the motion

The Board unanimously voted not to disclose the Closed Session discussion.

16. Adjourn

The meeting was adjourned at 3:46 PM.



TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND



TREASURE ISLAND DEVELOPMENT AUTHORITY
SPECIAL MEETING AGENDA

June 11, 2008 - 1:00 P.M.

Room 400, City Hall
1 Dr. Carlton B. Goodlett Place

Gavin Newsom, Mayor

DIRECTORS

Claudine Cheng, *President*
Fred Blackwell
Jared Blumenfeld
Supervisor Chris Daly (*Ex-Officio*)

John Elberling, *C.F.O.*
John Rahaim
Owen Stephens, *Secretary*

Mirian Saez, Director of Island Operations
Peter Summerville, Commission Secretary

ORDER OF BUSINESS

DOCUMENTS DEPT.

1. Call to Order and Roll Call

2. POSSIBLE CLOSED SESSION

If approved by the TIDA Board, this Closed Session item will take place for approximately 30 minutes at the beginning of the meeting

- a. Public Comment on all items relating to closed session
- b. Vote on whether to hold closed session to confer with real property negotiators. (*Action item*)

c. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Persons negotiating for the Authority: Jack Sylvan, Michael Tymoff
Persons negotiating with the Authority: United States Navy, Treasure Island Community Development LLC,
Property: Former Naval Station Treasure Island

JUN - 9 2008

SAN FRANCISCO
PUBLIC LIBRARY

Under Negotiation:

Price: _____ Terms of payment: _____ Both: X

d. Reconvene in open session (*Action item*)

i. Possible report on action taken in closed session under Agenda Item 2 (Government Code section 54957.1 (a) (1) and San Francisco Administrative Code Section 67.12)

ii. Vote to elect whether to disclose any or all discussions held in closed session (*San Francisco Administrative Code Section 67.12*).

3. Report by Director of Island Operations (*Discussion Item*)

Length of Item: 5 minutes

4. Report by Office of Joint Development (*Discussion Item*)

Length of Item: 10 minutes

5. Communications (*Discussion Item*)

Length of Item: 5 minutes

6. Report by the Treasure Island/Yerba Buena Island Citizen's Advisory Board (*Discussion Item*)

Length of Item: 5 minutes

7. Ongoing Business by Directors (*Discussion Item*)

Length of Item: 5 minutes

8. General Public Comment (*Discussion Item*) ***In addition to General Public Comment (Item #8), Public Comment will be held during each item on the agenda.***

Length of Item: 10 minutes

9. **CONSENT AGENDA**

Length of Item: 5 minutes

All matters listed hereunder constitute a Consent Agenda, are considered to be routine by the Treasure Island Development Authority Board and will be acted upon by a single vote of the Authority Board. There will be no separate discussion of these items unless a member of the Authority Board so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.

a.) Approving the Minutes of the May 14, 2008 Regular Meeting (*Action Item*)

b.) Authorizing the Director of Island Operations to Retroactively Execute a Loan Agreement with the Fine Arts Museums of San Francisco for the Temporary Loan of the Miguel Covarrubias Mural "The Flora and Fauna of the Pacific" (*Action Item*)

c.) Resolution Approving and Authorizing the Execution of a Sublease with the Treasure Island Museum Association for Suites 111 and 019 in the Administration Building *(Action Item)*

d.) Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with the Boys & Girls Clubs of San Francisco for the Period from July 1, 2008 to June 30, 2009 *(Action Item)*

e.) Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with Toolworks, Inc., to Provide Janitorial Services Commencing July 1, 2008 and Expiring on June 30, 2009 *(Action Item)*

f.) Resolution Authorizing the Twenty Ninth Amendment to the Land and Structures Master Lease Number N6247499RP42P12 between the Authority and the Navy to include Buildings 92, 258 and associated lots in the Leased Premises *(Action Item)*

g.) Resolution Authorizing the Twenty First Amendment to the South Waterfront Master Lease Number N6247498RP00P99 between the Authority and the Navy to include Buildings 7, 41, 289, 290, 530 and associated lots in the Leased Premises *(Action Item)*

h.) Resolution Approving and Authorizing the Execution of a Sublease with The San Francisco Fog Rugby Football Club, Inc., for approximately 269,150 square feet of unimproved land located at 5th Street between Avenues H and D *(Action Item)*

i.) Resolution Approving and Authorizing the Execution of a Sublease with FCA Artists, Inc. for Building 140, Nimitz Conference Center *(Action Item)*

j.) Resolution Approving and Authorizing the Execution of a Sublease with James Payne, an individual doing business as Downtown Auto Sales-Storage for Parcel A: approximately 4,275 square feet of space at Building 41; and Parcel B: approximately 9,000 square feet of paved land located at the west side of Building 41, Treasure Island *(Action Item)*

k.) Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with the Treasure Island Homeless Development Initiative for the Period from July 1, 2008 to June 30, 2009 *(Action Item)*

l.) Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with Rubicon Enterprises, Inc. to Provide Landscape Services Commencing July 1, 2008, and Expiring on June 30, 2009 *(Action Item)*

10.) Informational Presentation on Readdressing of Treasure Island *(Discussion Item)*
Presented by: JoAnne Hicks, Department of Emergency Communications
Length of Item: 10 minutes

11.) Discussion of Future Agenda Items by Directors *(Discussion Item)*

12.) Adjourn

Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Development Authority Office, 410 Avenue of the Palms, Building 1, Treasure Island, and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.

Disability Access

The Treasure Island Development Authority holds its regular meetings at San Francisco City Hall. City Hall is accessible to persons using wheelchairs and others with disabilities. Assistive listening devices are available upon request. Agendas are available in large print. Materials in alternative formats and/or American Sign Language interpreters will be made available upon request. Please make your request for alternative format or other accommodations to the Mayor's Office on Disability 554-6789 (V), 554 6799 (TTY) at **least 72 hours** prior to the meeting to help ensure availability.

The nearest accessible BART station is Civic Center Plaza at the intersection of Market, Grove, and Hyde Streets. The accessible MUNI Metro lines are the J, K, L, M, and N (Civic Center Station or Van Ness Avenue Station). MUNI bus lines serving the area are the 47 Van Ness, 9 San Bruno, and the 6, 7, 71 Haight/ Noriega. Accessible curbside parking is available on 1 Dr. Carlton B. Goodlett Place and Grove Street. For more information about MUNI accessible services, call 923-6142.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based scented products. Please help the City to accommodate these individuals.

The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact: Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the SOTF or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>







HEATHER J. FONG
CHIEF OF POLICE

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO
THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4603

June 4, 2008



Ms. Mirian Saez
Executive Director
Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
SF., CA 94130

SENT VIA FACSIMILE TO (415) 274-0299

Reference: Treasure Island Crime Statistics – May 2008

Dear Ms. Saez:

There were twenty incident reports filed with the San Francisco Police Department about occurrences on Treasure Island and Yerba Buena Island during the month of May 2008. Please see Attachment A for specific information.

Please Contact me at (415) 553-9154 or at David.Lazar@sfgov.org if you have any questions.

Sincerely,

David Lazar
Captain – Southern Station

By:

Officer Louis Glaser
Southern Station
(415) 553-7959



BAY BRIDGE

SEISMIC SAFETY PROJECT

CAITRANS BAY AREA TOLL AUTHORITY CALIFORNIA TRANSPORTATION COMMISSION

Public Announcement

Closing the Eastbound on-ramp on Yerba Buena Island

- ◆ The on-ramp from Yerba Buena Island to East Bound I-80 towards the Oakland/East Bay will be closed on June 16, 17 & 18, 2008 from 11:00 PM to 5:00 AM each night.
- ◆ ALL TRAFFIC TO EASTBOUND I-80 FROM YERBA BUENA ISLAND MUST TAKE THE ONRAMP TO WESTBOUND I-80 TO SAN FRANCISCO.

Suggested Detour Route:

Motorists should enter westbound I-80 to travel to San Francisco, take the Fremont exit, stay right on Folsom leg, continue on Fremont St. and make a right on Harrison St. again to follow the detour signs and make a left to get onto the First St. on ramp. Then, continue to the Eastbound I- 80 freeway to Oakland.

- Please allow extra travel time

For more information, please visit our website at www.baybridgeinfo.org or contact our public information officer, Margena Wade at (415) 597-5895.

****PLEASE, REMEMBER TO SLOW FOR THE CONE ZONES****

THANK YOU!









TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND

*****Please Note Location*****

Agenda

**Treasure Island /Yerba Buena Island
Citizens' Advisory Board**

**Tuesday June 10, 2008 -- 6:00 p.m.
San Francisco City Hall, Room 305
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102**

For further information about the meeting please contact Andrea Bruss at (415) 554-6661

- I. Roll Call
- II. Approval of April 1, 2008 CAB Minutes. (Action Item)
- III. TIDA Staff Updates (Information Item):
 - a) Treasure Island Development Authority Board meeting of May 14, 2008
 - b) Legislative
 - c) Development Schedule Update
 - d) Naval Negotiations
 - e) Bay Bridge
 - f) Job Corps
 - g) Island Clean-Up
- IV. Discussion of State Legislation to Address Potential Requirement for Treasure Island Redevelopment Project Area Committee (Action Item)
- V. Future Agenda Items Discussion (Action Item)
- VI. Announcements from Board members (Information Item)
- VII. Public Comments
- VIII. Adjourn

MEETING AGENDAS AVAILABLE ON E-MAIL

If you would like to receive TICAB meeting agendas by e-mail, please send your name and e-mail address to TICAB@sfgov.org.

Disability Access

The Treasure Island Development Authority holds its regular meetings at San Francisco City Hall. City Hall is accessible to persons using wheelchairs and others with disabilities. Assistive listening devices are available upon request. Agendas are available in large print. Materials in alternative formats and/or American Sign Language interpreters will be made available upon request. Please make your request for alternative format or other accommodations to the Mayor's Office on Disability 554-6789 (V), 554 6799 (TTY) at least 72 hours prior to the meeting to help ensure availability.

The nearest accessible BART station is Civic Center Plaza at the intersection of Market, Grove, and Hyde Streets. The accessible MUNI Metro lines are the J, K, L, M, and N (Civic Center Station or Van Ness Avenue Station). MUNI bus lines serving the area are the 47 Van Ness, 9 San Bruno, and the 6, 7, 71 Haight/ Noriega. Accessible curbside parking is available on 1 Dr. Carlton B. Goodlett Place and Grove Street. For more information about MUNI accessible services, call 923-6142.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based scented products. Please help the City to accommodate these individuals.

The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

TREASURE ISLAND WEBSITE

Check out the Treasure Island website at www.sfgov.org/treasureisland to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.

Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign and Governmental Code 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102, telephone (415) 581-2300, fax (415) 581-2317 and web site <http://www.sfgov.org/ethics/>.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact: Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the SOTF or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

FREE

TREASURE ISLAND EXPO!!!

African notes!

baked goods

Games!!!

barbecue

BOUNCE HOUSE

FREE DRINKS

FINANCIAL FAIR

SATURDAY, JUNE 7TH

music

11 to 2 pm

avenue B and 12th street

BE THERE FOR SOME FUN

Scuba lesson info

Organized by TIHDI

contact 415 986 4810, sherrylmorris@tihdi.org, palak@tihdi.org



CITY & COUNTY OF SAN FRANCISCO

TREASURE ISLAND DEVELOPMENT AUTHORITY
410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND



GAVIN NEWSOM, MAYOR

May 28, 2008

Ms. Kathleen Berrin
Fine Arts Museums of San Francisco
De Young Museum
Golden Gate Park
50 Hagiwara Tea Garden Drive
San Francisco, CA 94118

Dear Ms. Berrin, *Kathy*

I write in response to your email of May 27th, 2008 in which Fine Arts Museums of San Francisco (FAMSF) requests to borrow the Treasure Island Development Authority (TIDA) mural "Flora and Fauna", one of the murals which make up the Miguel Covarrubias "Pageant of the Pacific" mural set. It is our understanding that FAMSF intends to install the mural for public display at the de Young Museum in San Francisco for a period of several months, starting in early June, 2008.

TIDA is pleased to grant your request for loan of the mural for the purposes and length of time outlined in your request. Thank you for your interest in this mural, and for enabling this mural to be put on appropriate public display for all of San Francisco to enjoy. TIDA staff will work with the FAMSF Registrar on the paperwork and coordination necessary to enact this loan. We look forward to this exhibit, and to building upon the existing productive relationship between TIDA and FAMSF.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter Summerville".

Peter Summerville
Treasure Island Development Authority

CC: TIDA Board of Directors
Mirian Saez, Director of Island Operations
Ed Lee, City Administrator



May 23, 2008

Mark Kramer
66 C Yerba Buena Road
San Francisco, CA. 94130

Dear Mark:

The Villages at Treasure Island is in receipt of your letter dated May 23, 2008 regarding parking in the community. We are aware of the limited parking on Yerba Buena Island. Each residential address is assigned one parking space and the "hill top lot" contains sufficient spaces for each residential address to have one additional space. As this lot is first-come first-served, enforcement of the parking rules is essential. The issues you raise concerning parking are being addressed. We have begun the enforcement of the parking rules in an effort to ensure vehicles are registered and the parking spaces are equally utilized.

Regarding your request to park in the "Coast Guard" spaces in the evening, you should contact Coast Guard personnel and request the accommodation.

Regarding the lack or faded "STOP" pavement markings, we will inspect the area and make the necessary repairs to ensure the areas you mentioned are designated appropriately to increase community safety.

Thank you for your correspondence. It is the efforts of residents such as yourself that allow us to become aware of issues and make the necessary improvements to ensure quality of life for all at Treasure Island.

Sincerely,

Dan Stone
Property Manager

CC: TIDA Board of Directors









AGENDA ITEM
Treasure Island Development Authority
City and County of San Francisco

Agenda Item No. 9(b)

June 11, 2008

Subject: Authorizing the Director of Island Operations to Retroactively Execute a Loan Agreement with the Fine Arts Museums of San Francisco for the Temporary Loan of the Miguel Covarrubias Mural "The Flora and Fauna of the Pacific" (*Action Item*)

Staff Contact/Phone: Mirian Saez, Director of Island Operations
(415) 274-0660

SUMMARY OF PROPOSED ACTION

This item seeks the approval of the Board of Directors of the Treasure Island Development Authority ("Authority") to retroactively execute a Loan Agreement with the Fine Arts Museums of San Francisco ("FAMSF") for the purposes of the temporary loan and exhibition of the Miguel Covarrubias mural "The Flora and Fauna of the Pacific", one of the murals which makes up the "Pageant of the Pacific" mural set, at the deYoung Museum in San Francisco.

BACKGROUND

In May, 2008, FAMSF approached Treasure Island Development Authority ("Authority") staff to request a loan of the individual mural "The Flora and Fauna of the Pacific", one of the murals which make up the Authority's "Pageant of the Pacific" mural set, painted by famed Mexican muralist Miguel Covarrubias at the 1939 Golden Gate International Exposition. FAMSF requested to display the mural to the public in the deYoung Museum's Latin American wing from June 2008 through February of 2009, and is covering all costs associated with the round trip transport, installation, exhibition and insuring of the mural.

Due to both FAMSF's known technical and curatorial abilities and the participation and assistance provided by FAMSF to the Authority during the recent loan of the murals to the Government of Mexico, Authority staff recommends retroactive approval of the initial loan request on its merits. In order to accommodate FAMSF's installation and display schedule, the murals were transported to the deYoung Museum for installation on June __, 2008, and the mural was installed at the deYoung Museum on Friday, June 5th, 2008, where it will remain through February 28, 2009. The resolution before the Authority Board seeks retroactive authorization of FAMSF's standard Loan Agreement, attached as Exhibit A, which memorializes FAMSF's obligations regarding transport, exhibition and insuring of the mural.

RECOMMENDATION

Staff recommends retroactive approval of the Loan Agreement.

EXHIBITS

- A Loan Agreement between the Authority and the Fine Arts Museums of San Francisco
- B Photograph of "The Flora and Fauna of the Pacific" on display in Mexico City, Summer of 2007

Prepared by Peter Summerville
for Mirian Saez, Director of Island Operations

1 [Loan of a Miguel Covarrubias Mural to the Fine Arts Museums of San Francisco]
2 **Authorizing the Director of Island Operations to Execute a Loan Agreement with the**
3 **Fine Arts Museums of San Francisco for the Temporary Loan of the Miguel**
4 **Covarrubias Mural "The Flora and Fauna of the Pacific".**

5
6 **WHEREAS**, Under the Treasure Island Conversion Act of 1997, which amended
7 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to
8 Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated
9 the Authority as a redevelopment agency under California redevelopment law with authority
10 over former Naval Station Treasure Island (the "Base"), and (ii) with respect to those
11 portions of the Base which are subject to the public trust for commerce, navigation and
12 fisheries (the "Tidelands Trust"), vested in the Authority the authority to administer the
13 Tidelands Trust as to such property; and,
14

15
16 **WHEREAS**, The Tidelands Trust prohibits the sale of Tidelands Trust property into
17 private ownership, generally requires that Tidelands Trust property be accessible to the
18 public and encourages public oriented uses of trust property that among other things,
19 attract people to the waterfront, promote public recreation, protect habitat and preserve
20 open space; and,
21

22 **WHEREAS**, The Board of Supervisors approved the designation of the Authority as
23 a redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated
24 February 6, 1998; and,
25

1 **WHEREAS**, On March 29, 2001, the Authority approved a resolution accepting as a
2 gift from the Port of San Francisco five Miguel Covarrubias murals collectively titled
3 "Pageant of the Pacific" (the "Murals"); and,

4 **WHEREAS**, The Fine Arts Museums of San Francisco ("FAMSF") wishes to borrow
5 the individual mural "The Flora and Fauna of the Pacific" for the purpose of publicly
6 displaying the mural at the deYoung Museum from June 2008 through February of 2009;
7 and,
8

9 **WHEREAS**, Under the terms of the Agreement, FAMSF shall cover all costs related
10 to the transportation, insurance, handling and display of the Murals; now therefore be it,

11 **RESOLVED**, That the Authority hereby retroactively authorizes the Director of Island
12 Operations or her designee to execute the Loan Agreement in substantially the form
13 attached hereto as Exhibit A with the FAMSF for temporary loan of the Miguel Covarrubias
14 Mural "The Flora and Fauna of the Pacific"; and, be it

15 **FURTHER RESOLVED**, That the Board of Directors hereby authorizes the Director
16 of Island Operations or her designee to enter into any additions, amendments or other
17 modifications to the Loan Agreement that the Director of Island Operations determines in
18 consultation with the City Attorney are in the best interests of the Authority, that do not
19 materially increase the obligations or liabilities of the Authority, that do not materially reduce
20 the rights of the Authority, and are necessary or advisable to complete the preparation and
21 approval of the Agreement, such determination to be conclusively evidenced by the
22 execution and delivery by the Director of Island Operations or her designee of the
23 documents and any amendments thereto.
24
25

1
2 **CERTIFICATE OF SECRETARY**

3 I hereby certify that I am the duly elected and acting Secretary of the
4 Treasure Island Development Authority, a California nonprofit public benefit
5 corporation, and that the above Resolution was duly adopted and approved by the
6 Board of Directors of the Authority at a properly noticed meeting on June 11, 2008.
7
8

9 _____
10 Owen Stephens, Secretary
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



FINE ARTS MUSEUMS OF SAN FRANCISCO

LOAN AGREEMENT

☐ Legion of Honor
Lincoln Park, San Francisco, CA 94121
415 750 3600, 415 750 3636 Fax

☐ de Young, 50 Hagiwara Tea Garden Dr.
San Francisco, CA 94118
415 750 3680, 415 750 7692 fax

Document No: 5852
Exhibition: de Young Museum 6/1/08 - 2/28/09
Depositor: Treasure Island Development Authority
410 Avenue of Palms, Building 1, 2nd Floor
San Francisco, CA 94130 USA
415-274-0665

Credit Line:
(for label)

"The Flora and Fauna of the Pacific" - 1939
Miguel Covarrubias
Part of the mural set "The Pageant of the Pacific"
On loan from the Treasure Island Development Authority

INSURANCE: Do you wish the Fine Arts Museums of San Francisco to insure your art object? ☒ Yes No \$1,500,000 USD

If Yes, state insurance value above. (FAMSF is prepared to insure art objects on your behalf for this amount only while objects are in our care, custody or control.)

If No, and you prefer to maintain your own insurance coverage, please estimate premium per month: \$

PACKING AND SHIPMENT:

LOANS ARE TO REACH THE

VIA: Arrowe

de Young

MUSEUM BY DATE OF

6.5.08

Packing & transportation costs of this loan will be assumed by: FAMSF

PLEASE COMPLETE INFORMATION FOR MUSEUM RECORDS ON BOTH SIDES OF FORM

REG NO.	MAKER/COUNTRY	TITLE/DESCRIPTION	VALUE
L08.52.1-12	Miguel Covarrubias (Mexican) 1904 - 1957	The Fauna and Flora of the Pacific (from the Pageant of the Pacific murals, 1939 Treasures Island Exposition), 1939 lacquer fresco on masonite, 456.6 x 727.7 cm (179 3/4 x 286 1/2 in.)	\$ 1,500,000

ADDITIONAL HISTORY OF THE LOANED OBJECT: Please attach to all copies of this loan form a typed sheet giving any information available in the following categories:

PROVENANCE (History of Ownership)
 PREVIOUS EXHIBITIONS
 ILLUSTRATIONS, REFERENCES, BIBLIOGRAPHY
 NOTES ON PHYSICAL CONDITION (if not enough space on the face of this form)

CONDITIONS GOVERNING LOAN

1. The Fine Arts Museums of San Francisco, the Borrower, will exercise the same CARE OF LOANS, as it does in the safekeeping of its own property. It is understood that the object covered on this loan shall remain in the same condition in which it was received. It shall not be cleaned, repaired, retouched or altered in any way whatsoever except with the WRITTEN PERMISSION of the Lender. Damages, whether in transit or on the premises of the borrowing institutions, and regardless of who may be responsible shall be reported to the Lender immediately.

2. LOANS WILL BE RETURNED only to the Owner or Lender or to his or her duly authorized agent or representative, or, in the event of the death of the Owner, or Lender, to the duly authorized legal representative of the estate of the Owner or Lender. It is incumbent upon the Lender to notify The Fine Arts Museums of San Francisco of any changes of address of the Lender or Owner, or of the duly authorized legal representatives to whom correspondence should be sent.

3. INSURANCE: Unless the Lender expressly elects to maintain his/her own insurance, The Fine Arts Museums of San Francisco will insure this loan "wall-to-wall" under its fine arts policy, in the amount indicated on the face of this form, against all risks of physical loss or damage from any external cause while in transit and during residence at the Museum or museums throughout the period of this loan.

The policy referred to contains limitations for acts of God and the usual exclusions for loss or damage due to wear and tear, gradual deterioration, moths, vermin, inherent vice, or damage sustained due to and resulting from any repairing, restoration or retouching process, or due to such causes as hostile or warlike action in time of peace or war, atomic, nuclear or radioactive force, reaction or contamination, insurrection, rebellion, revolution, civil war, usurped power, action taken by governmental authority in hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulation, confiscation by order of any governmental or public authority, or risks of contraband or illegal transportation of trade.

IF THE LENDER ELECTS TO MAINTAIN HIS/HER OWN INSURANCE, the Borrower, The Fine Arts Museums of San Francisco, can accept no responsibility for any error or deficiency in information furnished to or by the Lender's insurers, nor for lapses in coverage. In this case we must receive either a Certificate of Insurance naming The Fine Arts Museums of San Francisco as "Additional Insured," or a "Waiver of Subrogation" executed by the Lender.

THIS DOCUMENT CONSTITUTES AN OFFICIAL LOAN AGREEMENT
 SIGNATURE OF THE LENDER OR AUTHORIZED AGENT OF THE LENDER OR LENDING INSTITUTION
 WILL ACKNOWLEDGE ACCEPTANCE OF THE CONDITIONS NOTED ABOVE.

Steven F. Correll

BORROWER (Authorized Signature)

Please type NAME & TITLE: ASSISTANT REGISTRAR

DATE: 5/28/00

Please SIGN & return all copies to FAMSF Registrar.

LENDER (Authorized Signature)

Please type NAME & TITLE:

DATE:





AGENDA ITEM 9(c)
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Approving and Authorizing the Execution of a Sublease with the Treasure Island Museum Association for Suites 111 and 019 in the Administration Building (Action Item)

Contact: Peter Summerville, Leasing Manager

Phone: 415-274-0660

BACKGROUND

The Treasure Island Museum Association, a California non-profit corporation (hereafter referred to as "TIMA"), is a group whose mission is to advance the programming and appreciation of the history of Treasure and Yerba Buena Islands. The group is comprised of Bay Area residents, many former docents and guides at the old Treasure Island Museum, who are committed to the preservation of the history of Treasure Island and advocacy for the establishment of a future museum on Treasure Island. TIMA wishes to work with the Authority on exhibits and historic programming during the interim reuse period which will bring more public attention to the history of the Islands.

TIMA requests to sublease approximately 896 square feet of office and storage space in the Treasure Island Administration Building in order to aid their efforts assisting the Authority, and to allow for a central location for storage of their materials and records.

SUBLEASE TERMS AND CONDITIONS

TIMA will sign the Authority's standard form Sublease document. The salient terms and conditions of the proposed Sublease include the following:

Premises:	Parcel A: approximately 160 square feet of office space located at the Administration Building, Suite 111; and Parcel B: approximately 736 square feet of storage space located at the Administration Building, Suite 019
Location:	Treasure Island Administration Building, 410 Avenue of the Palms at California Avenue.
Commencement Date:	July 1, 2008
Lease Expiration Date:	November 30, 2008
Lease Term:	month-to-month

Base Rent: The Premises will be provided to the Subtenant at no Base Rent in consideration of the Subtenant's obligation to assume all responsibility for development, maintenance, and repairs to the Premises, and to provide a public benefit to the community by aiding in ongoing historic programming and public outreach in furtherance of the preservation of the history of and historic elements relating to Treasure and Yerba Buena Islands

Use: Parcel A: Office and storage space; and Parcel B: storage space; and for no other purpose.

Security Deposit: \$1,000.00

PROPOSED MONTHLY BASE RENT

Under the Authority's Interim Subleasing Policy, the Minimum Rental Rate Schedule sets ranges of minimum sublease rental rates per square foot by type of use and facility for office and industrial space. Authority Staff reviews and analyzes available commercial data including market comparables of properties similarly situated to the Authority properties and evaluates the Authority transactions over the past 12 months to establish fair market value. The Authority Board last approved the Minimum Rental Rate Schedule in July 2007, by Resolution No. 07-54-07/11. The Subleasing Policy has established a minimum acceptable rental rate of \$0.75 PSF for use of office space in the Administration Building.

Authority staff and TIMA have negotiated a Sublease with no Base Rent. In consideration of the mission of TIMA and the willingness of TIMA to assist the Authority in historic programming activities and the preservation of the history of Treasure and Yerba Buena Island, the monthly base rent for use of the space is waived as outlined in the Terms and Conditions. Although a rental rate for this property has been established, Authority Staff believes that the services and benefits TIMA will provide to the Authority and the City for the historic programming and preservation relating to the history of Treasure and Yerba Buena Island represents fair market value for this portion of the Administration Building at this time. TIMA agrees to fulfill all insurance requirements related to use of the space, to follow the standard Rules and Regulations for occupation of space on Treasure Island, and to pay a security deposit upon occupation of the space.

RECOMMENDATION

The Authority Staff recommends that the Authority Board of Directors approve the proposed Sublease with the Treasure Island Museum Association, a California non-profit corporation and authorize the Director of Island Operations or her designee to execute said Sublease for the rental of office space at the Treasure Island Administration Building on Treasure Island for a month-to-month term and subject to the additional terms and conditions set forth above.

EXHIBIT A – Sublease between the Treasure Island Development Authority and the Treasure Island Museum Association

Prepared by: Peter Summerville
For: Mirian Saez, Director of Island Operations

1 [Sublease with Treasure Island Museum Association]

2 **Resolution Approving and Authorizing the Execution of a Sublease with the Treasure**
3 **Island Museum Association for Suites 111 and 019 in the Administration Building.**

4 WHEREAS, Former Naval Station Treasure Island is a military base located on
5 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by
6 the United States of America, acting by and through the Department of the Navy (the "Navy");
7 and,

8 WHEREAS, The Base was selected for closure and disposition by the Base
9 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
10 subsequent amendments; and,

11 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
12 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
13 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
14 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
15 conversion of the Base for the public interest, convenience, welfare and common benefit of
16 the inhabitants of the City and County of San Francisco; and,

17 WHEREAS, The Treasure Island Museum Association., a California non-profit
18 corporation (hereafter referred to as "TIMA") is requesting a month-to-month Sublease for
19 approximately 896 square feet of office and storage space in the Treasure Island
20 Administration Building commencing on July 1, 2008; and,

21 WHEREAS, The mission of TIMA is to further the preservation of and public education
22 about the history of Treasure and Yerba Buena Islands; and,

23 WHEREAS, The TIMA will assume all responsibility for development, maintenance,
24 and repairs to the facilities and provide a public benefit to the community by aiding the
25 Authority is its historic programming and preservation endeavors; and,

1 WHEREAS, Although the Authority will receive no monthly base rent for this Sublease,
2 Authority staff believes the public and community benefits that TIMA will make represents fair
3 market value for this Sublease at this time; now, therefore, be it

4 RESOLVED, That the Board of Directors hereby approves the Sublease to TIMA of
5 approximately 896 square feet of office and storage space at the Treasure Island
6 Administration Building and authorizes the Director of Island Operations or her designee to
7 execute said Sublease in substantially the form attached hereto as Exhibit A; and be it

8 FURTHER RESOLVED, That the Board of Directors hereby finds that (i) entering into
9 the Sublease will serve the goals of the Authority and the public interests of the City, and (ii)
10 the terms and conditions of the Sublease are economically reasonable; and be it

11 FURTHER RESOLVED, That TIMA will assume all responsibility for maintenance and
12 repairs to the premises and that The Premises will be provided to the Subtenant at no Base
13 Rent in consideration of the Subtenant's obligation to assume all responsibility for
14 development, maintenance, and repairs to the Premises, and to provide a public benefit to the
15 community by aiding in ongoing programming and public outreach in furtherance of the
16 preservation of the history of and historic elements relating to Treasure and Yerba Buena
17 Islands .; and Be It

18 FURTHER RESOLVED, That in accord with the appraised fair market rent for office
19 space on Treasure Island, the premises will be provided to the TIMA at no cost for the term of
20 the Sublease in consideration of TIMA's obligations to provide assistance to the Authority on
21 projects relating to the historic programming and preservation of Treasure and Yerba Buena
22 Islands; and Be It

23 FURTHER RESOLVED, That the Board of Directors hereby authorizes the Director of
24 Island Operations to enter into any additions, amendments or other modifications to the
25 Sublease that the Director of Island Operations determines in consultation with the City

1 Attorney are in the best interests of the Authority, that do not materially increase the
2 obligations or liabilities of the Authority, that do not materially reduce the rights of the
3 Authority, and are necessary or advisable to complete the preparation and approval of the
4 Sublease, such determination to be conclusively evidenced by the execution and delivery by
5 the Director of Island Operations of the documents and any amendments thereto.
6
7
8
9
10
11
12

13 **CERTIFICATE OF SECRETARY**

14 I hereby certify that I am the duly elected Secretary of the Treasure Island
15 Development Authority, a California nonprofit public benefit corporation, and that the
16 above Resolution was duly adopted and approved by the Board of Directors of the
17 Authority at a properly noticed meeting on June 11, 2008.
18
19

20 _____
Owen Stephens, Secretary
21
22
23
24
25



Item 8(c) – Exhibit A

SUBLEASE No. 57

between

TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

TREASURE ISLAND MUSEUM ASSOCIATION

A California Non-Profit Corporation

as Subtenant

For the Sublease of

Administration Building, Suites 019 & 111

Treasure Island Naval Station

San Francisco, California

July 1, 2008

TREASURE ISLAND SUBLEASE

Table of Contents

<u>Section</u>	<u>Page</u>
1. BASIC SUBLEASE INFORMATION.....	1
2. PREMISES.....	3
3. COMPLIANCE WITH MASTER LEASE	6
4. TERM.....	7
5. RENT	8
6. TAXES, ASSESSMENTS AND OTHER EXPENSES.....	9
7. USE; COVENANTS TO PROTECT PREMISES.....	9
8. ALTERATIONS	11
9. REPAIRS AND MAINTENANCE.....	12
10. LIENS	13
11. COMPLIANCE WITH LAWS.....	13
12. ENCUMBRANCES	14
13. DAMAGE OR DESTRUCTION.....	15
14. ASSIGNMENT AND SUBLETTING	15
15. DEFAULT; REMEDIES	16
16. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION	17
17. INSURANCE.....	20
18. ACCESS BY SUBLANDLORD	22
19. SURRENDER.....	23
20. HAZARDOUS MATERIALS.....	24
21. GENERAL PROVISIONS	26
22. SPECIAL PROVISIONS	30

LIST OF EXHIBITS:

EXHIBIT A – Master Lease
EXHIBIT B – Diagram of Premises
EXHIBIT C – Cover Page of Seismic Report
EXHIBIT D – Rules and Regulations
EXHIBIT E – Utilities
EXHIBIT F – TIHDI Work Force Hiring Plan

TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated for reference purposes only as of April 25, 2008, is by and between the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit corporation ("Sublandlord"), and TREASURE ISLAND MUSEUM ASSOCIATION, a California non-profit corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated September 17, 2004, as amended from time to time (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord certain real property located on Treasure Island Naval Station (the "Property"), as more particularly described in the Master Lease.

B. Subtenant desires to sublet from Sublandlord, and Sublandlord is willing to sublet to Subtenant, a portion of the Property on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. BASIC SUBLEASE INFORMATION

The following is a summary of basic sublease information (the "Basic Sublease Information"). Each item below shall be deemed to incorporate all of the terms of this Sublease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Sublease, the more specific provision shall control.

Sublease Reference Date: July 11, 2008

Sublandlord: TREASURE ISLAND DEVELOPMENT
AUTHORITY, a California public benefit
corporation

Subtenant: TREASURE ISLAND MUSEUM
ASSOCIATION, a California non-profit
corporation

Subleased Premises (Section 2.1):	Parcel A: approximately 160 square feet of office space located at the Administration Building, Suite 111; and Parcel B: approximately 736 square feet of storage space located at the Administration Building, Suite 019 as more particularly shown on <u>Exhibit B</u> , attached hereto.
Facility:	Administration Building
Term: (Section 4.1):	Commencement date: July 1, 2008 Expiration date: November 30, 2008 Notwithstanding anything in this Sublease to the contrary, either Sublandlord or Subtenant, in its sole discretion, may terminate this Sublease for any reason upon delivery of not less than thirty (30) days' prior written notice to the other party.
Base Rent (Section 5.1):	The Premises will be provided to the Subtenant at no Base Rent in consideration of the Subtenant's obligation to assume all responsibility for development, maintenance, and repairs to the Premises, and to provide a public benefit to the community by aiding in ongoing programming and public outreach in furtherance of the preservation of the history of and historic elements relating to Treasure and Yerba Buena Islands .
Rent Adjustment Date(s) (Section 5.2):	Not Applicable
Rent Increase Percentage (Section 5.2):	Not Applicable
Use (Section 7.1):	Parcel A: office and storage use only and for no other purpose; and Parcel B: office and storage use only and for no other purpose.
Repair Amount (Section 13.1):	One Thousand Dollars (\$1,000.00)
Security Deposit (Section 19.3):	One Thousand Dollars (\$1,000.00)

Notice Address of Sublandlord (Section 21.1): Treasure Island Development Authority
Treasure Island Project Office
410 Avenue of Palms
Building 1, 2nd Floor
Treasure Island
San Francisco, CA 94130
Attn: Mirian Saez
Director of Island Operations
Fax No.: 415-274-0299

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Eileen M. Malley
Fax No.: (415) 554-4755

Notice Address of Subtenant (Section 21.1): TREASURE ISLAND MUSEUM
ASSOCIATION
Attn: Bernard Nebenzahl
300 Montgomery St. #1050
San Francisco, CA 94104
Phone No. (415) 435-4433
Fax No. N/A

Notice Address of Master Landlord (Section 21.1): Department of The Navy
Base Realignment and Closure
Program Management Office West
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310
Fax #: (619) 532-9858

2. PREMISES

2.1. **Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises. Subtenant shall have the non-exclusive right to use, together with other subtenants in the Facility, the lobbies, corridors, elevators, stairways and other public areas of the Facility and the Property (collectively, the "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Facility

and the Property.

In the event Subtenant uses or occupies space outside the Premises without the prior written consent of Sublandlord (the "Encroachment Area"), then upon written notice from Sublandlord ("Notice to Vacate"), Subtenant shall immediately vacate such Encroachment Area and pay as additional rent for each day Subtenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by Sublandlord's Board of Directors for the Premises or the Facility, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Sublandlord (the "Encroachment Area Charge"). If Subtenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Sublandlord of the Encroachment Area Charge be deemed a consent by Sublandlord to the use or occupancy of the Encroachment Area by Subtenant or a waiver (or be deemed as waiver) by Sublandlord of any and all other rights and remedies of Sublandlord under this Sublease (including Subtenant's obligation to indemnify, defend and hold Sublandlord harmless as set forth in the last paragraph of this Section 2.1), at law or in equity.

In addition to the foregoing amount, Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Sublandlord determines during subsequent inspection(s) that Subtenant has failed to vacate the Encroachment Area, then Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Sublandlord to Subtenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Sublandlord will incur by reason of Sublandlord's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Subtenant's failure to comply with the applicable Notice to Vacate and Sublandlord's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Sublandlord under this Sublease, at law or in equity. The amounts set forth in this Section 2.1 shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area.

In addition to the rights and remedies of Sublandlord as set forth in the immediately foregoing two paragraphs of this Section 2.1, the terms and conditions of the indemnity and exculpation provision set forth in Section 16 below shall also apply to Subtenant's use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Subtenant shall additionally indemnify, defend and hold Sublandlord harmless from and against any and all loss or liability resulting from delay by Subtenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any claims

against Sublandlord made by any tenant or prospective tenant founded on or resulting from such delay and losses to Sublandlord due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 2.1 and the reasonableness of the amount of the charges described in this Section 2.1.

Initials: _____ Sublandlord _____ Subtenant

2.2. As Is Condition of Premises.

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Subtenant's Agents"), of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 2.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises ("Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below), (iii) the quality, nature or adequacy of any utilities serving

the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use by Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 2.2(b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that any structures or improvements located on or about the Premises, may fail structurally and collapse.

3. COMPLIANCE WITH MASTER LEASE

3.1. Incorporation by Reference. All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

3.2. Performance of Master Landlord's Obligations. Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

3.3. Conflict. If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

3.4. Compliance with Master Lease. Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of

any rights of termination reserved by or vested in the Master Landlord.

4. TERM

4.1. **Term of Sublease.** The term of this Sublease (the "Term") shall commence on the Commencement Date set forth in the Basic Sublease Information, and expire on the Expiration Date set forth in the Basic Sublease Information, unless sooner terminated pursuant to the terms of this Sublease.

4.2. **Effective Date.** This Sublease shall become effective on the date (the "Effective Date") upon the later of (i) the Parties' execution and delivery of this Sublease, (ii) Sublandlord's Board of Director's approval of this Sublease at a duly noticed meeting, if such approval is required, or (iii) the Commencement Date.

4.3. **Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

4.4. **Termination by Sublandlord.** Subtenant's period of occupancy of the Premises is subject to Sublandlord's right to terminate this Sublease as provided herein at such time as Sublandlord determines, in its sole discretion, that the Premises are needed in connection with a Sublandlord program or project. As used herein, "Sublandlord program or project" shall mean any development or renovation, by public and/or private parties, of the building or land in or on which the Premises are located. In the event of any such development or renovation, Sublandlord shall have the right to terminate this Sublease without liability or expense upon delivery to Subtenant of thirty (30) days prior written notice of such termination. Subtenant agrees and shall be required to surrender possession of the Premises by the end of such thirty (30) day period.

4.5. **No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person as that term is defined under the California Government Code Section 7260 et seq. ("California Relocation Act") and the Uniform Relocation Assistance and Real Property Policies Act, 42 U.S. C. 4601 et seq. ("URA"), and that Subtenant will not be entitled to any relocation benefits provided under the California Relocation Act and the URA, including any moving expenses, reimbursement for costs associated with increased rent, loss of goodwill or other costs related to the termination of Subtenant's Lease and Subtenant's relocation from the Premises. Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers,

directors and employees, agents, contractors and successors and assigns and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260, et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4601, et seq.).

Initials: _____ Subtenant

5. RENT

5.1. Base Rent. Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Base Rent in the amount set forth in the Basic Sublease Information. Base Rent shall be paid to Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 21.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

5.2. Adjustments in Base Rent. If this Sublease has not been terminated, then on each Rent Adjustment Date set forth in the Basic Sublease Information, the Base Rent shall be increased by the Rent Increase Percentage set forth in the Basic Lease Information.

5.3. Additional Charges. In addition to Base Rent, Subtenant shall pay all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder, all utility charges, and any amounts other than Base Rent that shall become due and payable by Subtenant under this Sublease (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

5.4. Late Charge. If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

5.5. **Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1. **Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

6.2. **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES

7.1. **Subtenant's Permitted Use.** Subtenant may use the Premises for the Permitted Use set

forth in the Basic Sublease Information, but for no other purpose without the prior written consent of Sublandlord, which consent may be given or withheld in Sublandlord's sole and absolute discretion.

7.2. Subtenant's Access to the Premises. As provided in Section 30 of the Master Lease, Subtenant shall have access to the Premises on a 24-hours per day, seven days a week basis; provided, however, Subtenant shall coordinate such access with the local representative of Master Landlord.

7.3. Rules and Regulations. Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

7.4. Easements. This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"); provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

7.5. No Interference with Navy Operations. Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over Subtenant's use of the Premises in the event of any conflict; provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

7.6. No Unlawful Uses, Nuisances or Waste. Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste

on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas on or about the Property outside of the Premises.

8. ALTERATIONS

8.1. Alterations. Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications for any Alterations approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of construction on the Premises at all times.

8.2. Historic Properties. Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to any improvements on the Premises (i) which will affect the historic characteristics of the improvements or modify the appearance of the exterior of the improvements without Master Landlord's and Sublandlord's prior written consent, or (ii) if such Alterations would preclude qualifying the improvements for inclusion on the National Register for Historic Places.

8.3. Ownership of Alterations. Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 8 shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 19 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 8.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

8.4. Subtenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment used upon or installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and shall be removed by Subtenant, subject to the provisions of Section 19 hereof.

Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

8.5. Sublandlord's Alterations. Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the improvements on the Premises; provided, that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the purposes stated herein.

9. REPAIRS AND MAINTENANCE

9.1. Subtenant Responsible for Maintenance and Repair. Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

9.2. Utilities. Sublandlord shall provide the basic utilities and services described in the attached Exhibit E (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole cost, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

9.3. Landscaping. Subtenant shall maintain the exterior landscaping of the Premises in good condition and repair.

9.4. Janitorial Services. Subtenant shall provide all janitorial services for the Premises.

9.5. Pest Control. Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

9.6. Trash. Subtenant shall deposit all trash into designated containers in the Premises in

compliance with the Rules and Regulations attached hereto as Exhibit F. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

9.7. No Right to Repair and Deduct. Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

10. LIENS

10.1. Liens. Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

11. COMPLIANCE WITH LAWS

11.1. Compliance with Laws. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary; provided, however Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future

Environmental Laws (as defined in this Sublease below), and all applicable provisions of the San Francisco Environment Code. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2. Regulatory Approvals.

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation, any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") Sublandlord, City and Master Landlord, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties"), against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

11.3. Compliance with Sublandlord's Risk Management Requirements. Subtenant shall not do anything, or permit anything to be done, in or about the Premises or to any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

12. ENCUMBRANCES

12.1. Encumbrance By Subtenant. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

13. DAMAGE OR DESTRUCTION

13.1. Damage or Destruction to the Premises. In the case of damage to or destruction of the Premises by earthquake, fire, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in Section 17 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more to repair than the Repair amount set forth in the Basic Lease Information, either party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 19 (except for damage caused by a casualty pursuant to which this Sublease may be terminated under this Section 13.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 13.1, then Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 8.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

13.2. No Abatement in Rent. In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 13.1 above, there shall be no abatement in the Rent payable hereunder.

13.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

14. ASSIGNMENT AND SUBLETTING

14.1. Restriction on Assignment and Subletting. Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, sublease or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone

other than itself, or sublet any portion of the Premises (a "Transfer"), without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion. Subtenant shall provide Sublandlord with a written notice of its intention to Transfer this Sublease or the Premises, together with a copy of the proposed Transfer agreement at least thirty (30) days prior to the commencement date of the proposed Transfer. Subtenant shall provide Sublandlord with such information regarding the proposed Transfer as Sublandlord may reasonably request.

14.2. Bonus Rental. If Sublandlord consents to a Transfer of any of Subtenant's interest in or rights with respect to the Premises pursuant to Section 14.1 above, then one hundred percent (100%) of any rent or other consideration payable to Subtenant in excess of the Base Rent payable hereunder (or the proportionate share thereof applicable to the portion of the Premises that is subject to the Transfer) shall be paid to Sublandlord immediately upon receipt by Subtenant.

15. DEFAULT; REMEDIES

15.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease; provided, Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord;

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days;

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted; and

(e) **Notices of Default.** The delivery to Subtenant of three (3) or more notices of default within any twelve (12) month period, irrespective of whether Subtenant actually cures such

default within the specified time period, may, in the sole and absolute discretion of the Authority, be deemed an incurable breach of this Sublease allowing the Authority to immediately terminate this Sublease without further notice or demand to Subtenant.

15.2. Remedies. Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

15.3. Sublandlord's Right to Cure Subtenant's Defaults. If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

16. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

16.1. Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not

limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused solely by the gross negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state

relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties' decision to Sublease the Premises to Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 16.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

16.2. Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Subtenant's use of the Premises, including but not limited to, any Losses arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the

custody of Subtenant or Subtenant's Agents or Subtenant's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises; and (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, in, on, or about the Premises or any Alterations, except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

17. INSURANCE

17.1. Required Insurance Coverage. Subtenant, at its sole cost and expense, shall maintain, or cause to be maintained, through the Term of this Sublease, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than One Million Dollars (\$1,000,000), explosion, collapse and underground (XCU).

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Subtenant's activity on the Premises or the Permitted Use.

(c) Worker's Compensation and Employer's Liability Insurance. If Subtenant has employees, Worker's Compensation Insurance in statutory amounts with Employer's Liability

with limits not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) **Personal Property Insurance.** Subtenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Subtenant for the replacement of Subtenant's personal property.

(e) **Other Coverage.** Such other insurance or different coverage amounts as is required by law or as is generally required by commercial owners of property similar in size, character, age and location as the Premises, as may change from time to time, or as may be required by the City's Risk Manager.

17.2. Claims-Made Policies. If any of the insurance required in Section 17.1 above is provided under a claims-made form of policy, Subtenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Sublease, to the effect that should occurrences during the Term give rise to claims made after termination of this Sublease, such claims shall be covered by such claims-made policies.

17.3. Annual Aggregate Limits. If any of the insurance required in Section 17.1 above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

17.4. Payment of Premiums. Subtenant shall pay the premiums for maintaining all required insurance.

17.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Sublandlord and Subtenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Sublease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

17.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Subtenant hereunder shall

contain a cross-liability clause, shall name as additional insureds the "THE TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the additional insureds with respect to claims arising under this Sublease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Subtenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Sublandlord with an AM Best rating of not less than A-VIII and authorized to do business in the State of California.

(c) All insurance policies required to be maintained by Subtenant hereunder shall provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Subtenant and Sublandlord. Such notice shall be given in accordance with the notice provisions of Section 21.1 below.

(d) Subtenant shall deliver to Sublandlord certificates of insurance and additional insured policy endorsements in a form satisfactory to Sublandlord evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Subtenant shall, upon Sublandlord's request, promptly furnish Sublandlord with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days' prior written notice, Sublandlord may require Subtenant to increase the insurance limits set forth in Section 17.1 above if Sublandlord finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Subtenant with respect to risks comparable to those associated with the use of the Premises.

(f) Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

(g) Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

18. ACCESS BY SUBLANDLORD

18.1. Access to Premises by Sublandlord.

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

18.2. Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

19. SURRENDER

19.1. Surrender of the Premises. Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 8.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal

Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

19.2. No Holding Over. If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises. Subtenant shall have no right to hold over without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and absolute discretion. If Sublandlord holds over the Premises or any part thereof after expiration or earlier termination of this Sublease, such holding over shall be terminable upon written notice by Sublandlord, and the Base Rent shall be increased to two hundred percent (200%) of the Base Rent in effect immediately prior to such holding over, and such holdover shall otherwise be on all the other terms and conditions of this Sublease. This Section shall not be construed as Sublandlord's permission for Subtenant to hold over. Acceptance of any holdover Base Rent by Sublandlord following expiration or termination of this Sublease shall not constitute an extension or renewal of this Sublease.

19.3. Security Deposit. Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount set forth in the Basic Sublease Information as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Subtenant within forty-five (45) days of the termination of this Sublease.

20. HAZARDOUS MATERIALS

20.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any

federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Subtenant agrees that it shall comply, without limiting the foregoing, with the provisions of Article 21 of the San Francisco Health Code including, without limitation, regarding obtaining and complying with the requirements of an approved hazardous materials management plan, and with the requirements of the environmental protection provisions provided for in Section 13 of the Master Lease.

20.2. Subtenant's Environmental Indemnity. If Subtenant breaches any of its obligations contained in Section 20.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 16.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including,

without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

20.3. Acknowledgment of Receipt of EBS and FOSL Reports. Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Subtenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises as described in the EBS and the FOSL. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 *et seq.*, requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Sublease, Subtenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 *et seq.*, 25359.7 and related statutes.

21. GENERAL PROVISIONS

21.1. Notices. Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to the appropriate addresses set forth in the Basic Sublease Information. Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any

notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 21.1 and applicable Laws, shall be deemed receipt of such notice.

21.2. No Implied Waiver. No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment of Rent due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

21.3. Amendments. Neither this Sublease nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

21.4. Authority. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosures set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

21.5. Joint and Several Obligations. The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

21.6. Interpretation of Sublease. The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and

such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

21.7. Successors and Assigns. Subject to the provisions of Section 14, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

21.8. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

21.9. Severability. If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

21.10. Governing Law. This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

21.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

21.12. Attorneys' Fees. In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Sublease, reasonable fees of attorneys in the Office of the San Francisco City Attorney (Sublandlord's General Counsel) shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Further, for purposes of this Sublease, the term "attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. The term "attorney" shall have the same meaning as the term "counsel".

21.13. Time of Essence. Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

21.14. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

21.15. Survival of Indemnities. Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any

claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

21.16. Relationship of Parties. Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

21.17. Recording. Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

21.18. Non-Liability of Indemnified Parties' Officials, Employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Sublease.

21.19. No Discrimination. Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

21.20. Counterparts. This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21.21. Master Landlord's Consent. This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord.

22. SPECIAL PROVISIONS

22.1. Signs. Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

22.2. Public Transit Information. Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant

employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

22.3. TIHDI Job Broker. Subtenant shall comply with the requirements of the TIHDI Work Force Hiring Plan attached hereto as Exhibit F.

22.4. Local Hiring. Subtenant further agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Subtenant's personnel needs and to contract with local businesses for Subtenant's purchase of supplies, materials, equipment or services.

22.5. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Sub-Subleases and Other Subcontracts.** Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Sublease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **HRC Form.** As a condition to this Sublease, Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, (i) Subtenant executed and submitted to the HRC Form HRC-128-101 with supporting documentation; and (ii) the HRC approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

22.6. MacBride Principles - Northern Ireland. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

22.7. Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Section 802(b) and 803(b) of the San Francisco Environment Code, Subtenant shall not provide any items to the construction of tenant improvements or Alterations in the Premises, or otherwise in the performance of this Sublease, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

22.8. Conflicts of Interest. Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete

disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

22.9. Wages and Working Conditions. Subtenant agrees that any person performing labor in the construction of any tenant improvements and any Alterations to the Premises, which Subtenant provides under this Sublease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Subtenant shall include, in any contract for construction of such tenant improvements and Alterations, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord upon request, certified payroll reports with respect to all persons performing labor in the construction of such tenant improvement work or any Alterations to the Premises.

22.10. Prohibition of Tobacco Advertising. Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Sublandlord or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

22.11. Pesticide Prohibition. Subtenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Subtenant to submit to Sublandlord an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant may need to apply to the Premises during the terms of this Sublease, (b) describes the steps Subtenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Subtenant's primary IPM contact person with the City. In addition, Subtenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

22.12. First Source Hiring Ordinance. The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged

individuals for entry level positions. Within thirty (30) days after Sublandlord adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Subtenant shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

22.13. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City departments and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

22.14. Conflicts of Interest. Through its execution of this Sublease, Subtenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Subtenant becomes aware of any such fact during the Term of this Sublease, Subtenant shall immediately notify Sublandlord.

22.15. Charter Provision. This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

22.16. Requiring Health Benefits for Covered Employees. Unless exempt, Subtenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Sublease as though fully set forth. The text of the HCAO is available on the web at www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml. Capitalized terms used in this Section and not defined in this Sublease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Subtenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Subtenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

(c) Subtenant's failure to comply with the HCAO shall constitute a material breach of this Sublease. Sublandlord shall notify Subtenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Sublease for violating the HCAO, Subtenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Subtenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Sublandlord shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Sublandlord.

(d) Any Subcontract entered into by Subtenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Subtenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Sublandlord may pursue the remedies set forth in this Section against Subtenant based on the Subcontractor's failure to comply, provided that Sublandlord has first provided Subtenant with notice and an opportunity to obtain a cure of the violation.

(e) Subtenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Sublandlord with regard to Subtenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Subtenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Subtenant shall keep itself informed of the current requirements of the HCAO.

(h) Subtenant shall provide reports to Sublandlord in accordance with any reporting standards promulgated by Sublandlord under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Subtenant shall provide Sublandlord with access to records pertaining to compliance with the HCAO after receiving a written request from Sublandlord to do so and being provided at least five (5) business days to respond.

(j) Sublandlord may conduct random audits of Subtenant to ascertain its compliance with HCAO. Subtenant agrees to cooperate with Sublandlord when it conducts such audits.

(k) If Subtenant is exempt from the HCAO when this Sublease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) (or [Fifty Thousand Dollars (\$50,000) if Subtenant is a qualified nonprofit], but Subtenant later enters into an agreement or agreements that cause Subtenant's aggregate amount of all agreements with Sublandlord to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

22.17. Notification of Limitations on Contributions. Through its execution of this Sublease, Subtenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

22.18. Preservation-Treated Wood Containing Arsenic. As of July 1, 2003, Subtenant may not purchase preservative-treated wood products containing arsenic in the performance of this Sublease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Subtenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

22.19. Resource Efficient City Buildings and Pilot Projects. Subtenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Subtenant

hereby agrees that it shall comply with all applicable provisions of such code sections.

22.20. Food Service Waste Reduction. Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully set forth. This provision is a material term of this Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Sublandlord will suffer actual damages that will be impractical or extremely difficult to determine; further, Subtenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Sublandlord will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Sublandlord because of Subtenant's failure to comply with this provision.

22.21. Estoppel Certificates. At any time and from time to time, within ten (10) days after Sublandlord's request, Subtenant will execute, acknowledge and deliver to Sublandlord a statement certifying the following matters: (a) the Commencement Date and Expiration Date of this Sublease; (b) that this Sublease is unmodified and in full force and effect (or if there have been modifications, that this Sublease is in full force and effect as modified and the date and nature of such modifications); (c) the dates to which the Rent has been paid; (d) that there are no Events of Default under this Sublease (or if there are any Events of Default, the nature of such Event of Default); and (e) any other matters reasonably requested by Sublandlord. Sublandlord and Subtenant intend that any such statement delivered pursuant to this paragraph may be relied upon by any assignee of Sublandlord's interest in the Master Lease or this Sublease, any mortgagee or any purchaser or prospective purchaser of the building or land on which the Premises are located. Subtenant irrevocably appoints Sublandlord, as Subtenant's agent, to execute and deliver in the name of Sublandlord any such instrument if Subtenant fails to do so, which failure shall also be an Event of Default under this Sublease.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

SUBTENANT:

**TREASURE ISLAND MUSEUM
ASSOCIATION, A California non-profit
corporation**

Claire Isaacs Wahrhaftig, President

Bernard Nebenzhal, Treasurer

SUBLANDLORD:

Treasure Island Development Authority

By: _____
Mirian Sacz
Director of Island Operations

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

Sublease Prepared By: Peter Summerville

(initial)

EXHIBIT A

MASTER LEASE

EXHIBIT B

DIAGRAM OF PREMISES

EXHIBIT C

COVER PAGE OF THE SEISMIC REPORT

EXHIBIT D

RULES AND REGULATIONS

1. All rules and regulations set out in the Master Lease shall prevail.
2. No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the Building or elsewhere on the Property, without prior written approval of Sublandlord.
3. Subtenant's contractors and invitees, while on the Premises or Subtenant's parking area, shall be subject to these Rules and Regulations, and will be subject to direction from Sublandlord and its agents, but will not be an agent or contractor of the Sublandlord or its agents. Subtenant's contractors shall be licensed by the State, insured and bonded at the amount requested by the Sublandlord.
4. Subtenant shall install and maintain at Subtenant's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises.

EXHIBIT E

STANDARD UTILITIES AND SERVICES AND RATES

Utilities Included

EXHIBIT F

TIHDI WORKFORCE HIRING AGREEMENT

AGENDA ITEM 9(d)
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with the Boys & Girls Clubs of San Francisco for the Period from July 1, 2008 to June 30, 2009 (Action Item)

Contact: Mirian Saez, Director of Island Operations

Phone: (415) 274-0660

BACKGROUND

The Boys & Girls Clubs of San Francisco ("BGCSF") is a California nonprofit corporation. The mission of BGCSF is to inspire and enable all young people, especially those from disadvantaged circumstances, to realize their full potential as productive, responsible and caring citizens. BGCSF has operated a Club at the Treasure Island Elementary School since the summer of 2000. They report that there are approximately 325 school-aged children and teens on Treasure Island and their agency served over 200 in the Calendar Year ending 2007. The average daily attendance is between 50 and 60.

BGCSF provides after-school and summer activities for school-aged youth on Treasure Island. With the closing of the elementary school, BGCSF and the City of San Francisco agreed that it was essential that BGCSF "stay put" and serve as a source of stability for the Island's young people.

The Treasure Island Club is open 3pm to 7pm Monday through Friday during the school year, 8am to 6pm in the summer and during holiday breaks, and Saturdays once a month from 12:30pm to 5pm. The facility has three full-time and two part-time staff members and three paid tutors. Programming focuses on life-skills and staff is trained to help children understand healthy choices as they explore new activities and find areas of interest. Virtues of caring, responsibility, respect, kindness, acceptance, commitment, service, and honesty are expected of all youth club members. Core Program areas offer youth a wide range of activities and services to support their lives. Program areas include daily homework completion and academic tutoring; literacy, math and science enhancement programs; financial literacy; community service and leadership clubs; sports instruction; inter-city sports leagues; nontraditional fitness activities; fine arts and crafts; age and gender specific health and life skills programs; social recreation and games; and technology.

In recognition of BGCSF's critical role in development of youth on the Island and their substantial contribution to the Treasure Island Community, in FY 2007-2008 Treasure Island Development Authority (the "Authority") entered into a One Hundred Thousand Dollar (\$100,000) Professional Services Agreement with BGCSF to provide youth oriented services to the Treasure Island community. The Authority also provided a grant of Eighty Thousand Dollars (\$80,000) of Community Benefits Funds to BGCSF for an Education Initiative and for

Behavioral Health Services for Treasure Island youth. Both programs provided community-wide benefits to Treasure Island.

The 2008-2009 Professional Services Agreement (the "Agreement") between the Authority and BGCSF will allow BGCSF to continue its role of inspiring youth to realize their full potential as productive, responsible and caring citizens, while continuing to serve as a source of stability for the Island's young people. The Authority will compensate BGCSF an amount not to exceed One Hundred and Forty Thousand Dollars (\$140,000) for providing the services described in the Agreement from July 1, 2008 through June 30, 2009.

BUDGET IMPACT

In Fiscal Year 2007-2008, the Authority paid BGCSF \$100,000 for its services to the Treasure Island Community. The Authority also proved BGCSF a grant of \$80,000 from Community Benefits Funds. While a similar grant to BGCSF will not be available in Fiscal Year 2008-2009, Project Staff recommends a \$40,000 increase in funding to BGCSF for additional services to be provided under the Agreement. These funds will be used to maintain current programs including Behavioral Health Services on Treasure Island.

RECOMMENDATION

Staff recommends approval of the Professional Services Agreement between the Treasure Island Development Authority and the Boys & Girls Clubs of San Francisco. The recommended agreement will increase compensation to BGCSF by \$40,000 per year. The additional funds will be used to sustain Behavioral Health Services on Treasure Island.

EXHIBITS

- A. Professional Services Agreement between the Treasure Island Development Authority and the Boys & Girls Clubs of San Francisco.
- B. Boys & Girls Clubs of San Francisco 2007-2008 Treasure Island Accomplishments

Prepared by Marc McDonald, Facilities Manager
for Mirian Saez, Director of Island Operations

[Boys & Girls Clubs of San Francisco Professional Services Agreement]

Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with the Boys & Girls Clubs of San Francisco for the Period from July 1, 2008 to June 30, 2009.

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base

1 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the
2 Base which are subject to Tidelands Trust, vested in the Authority the authority to administer
3 the public trust for commerce, navigation and fisheries as to such property; and

4 **WHEREAS**, The Board of Supervisors approved the designation of the Authority as a
5 redevelopment agency for Treasure Island in 1997; and,

6 **WHEREAS**, The City and County of San Francisco negotiated a proposed Base
7 Closure Homeless Assistance Agreement and Option to Lease Real Property (the "Homeless
8 Assistance Agreement") with the Treasure Island Homeless Development Initiative ("TIHDI"),
9 a consortium of nonprofit corporations organized to utilize the resources of former naval base
10 Treasure Island available to help fill gaps in the continuum of care for homeless persons and
11 families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance
12 Act of 1994; and,

13 **WHEREAS**, The Authority's purchasing policy and procedures authorize non-
14 competitive negotiations for contracts in furtherance of the Homeless Assistance Agreement;
15 and,

16 **WHEREAS**, Under an arrangement with TIHDI, the Boys & Girls Clubs of San
17 Francisco ("BGCSF") operated a Treasure Island Clubhouse to provide after-school and
18 summer activities for school-aged youth on Treasure Island in furtherance of the Homeless
19 Assistance Agreement ("the "BGCSF Services"); and,

20 **WHEREAS**, In 2007, TIHDI, BGCSF and the Authority agreed that the Authority and
21 BGCSF should contract directly for the BGCSF Services; and,

22 **WHEREAS**, At its July 11, 2007 meeting, the Authority's Board of Directors approved a
23 Professional Services Agreement with BGCSF for the BGCSF Services for the period from
24 July 1, 2007 through June 30, 2008; and,

1 **WHEREAS**, The Authority wishes to have BGCSF continue to provide the BGCSF
2 Services by entering into a new Professional Services Agreement (the "Agreement") under
3 which BGCSF will perform the BGCSF Services as more particularly described in the
4 Agreement for the period from July 1, 2008 through June 30, 2009, in furtherance of the
5 Homeless Assistance Agreement; and,

6 **WHEREAS**, BGCSF represents and warrants that it is qualified to perform the services
7 required by the Authority as set forth under the Agreement; and,

8 **WHEREAS**, The Authority has negotiated with BGCSF to reach agreement on the
9 scope of work, and budget for the BGCSF Services shown in the Agreement; Now, Therefore
10 Be It

11 **RESOLVED**, That the Board of Directors hereby authorizes the Director of Island
12 Operations to execute the Agreement, effective July 1, 2008, with BGCSF for an amount not
13 to exceed One Hundred and Forty Thousand Dollars (\$140,000), in substantially the form of
14 the Agreement attached hereto as Exhibit A; and, be it

15 **FURTHER RESOLVED**, That the Board of Directors hereby authorizes the Director of
16 Island Operations or her designee to enter into any additions, amendments or other
17 modifications to the Agreement that the Director of Island Operations or her designee
18 determines in consultation with the City Attorney are in the best interests of the Authority, that
19 do not materially increase the obligations or liabilities of the Authority, that do not materially
20 reduce the rights of the Authority, and are necessary or advisable to complete the preparation
21 and approval of the Agreement, such determination to be conclusively evidenced by the
22 execution and delivery by the Director of Island Operations or her designee of the documents
23 and any amendments thereto.
24
25

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on June 11, 2008.

Owen Stephens, Secretary

Item 9(D) – EXHIBIT A

**Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, California 94130**

Agreement between the Treasure Island Development Authority and

BOYS & GIRLS CLUBS OF SAN FRANCISCO

This Agreement is made this 1ST day of **July**, 2008, in the City and County of San Francisco, State of California, by and between: Boys & Girls Clubs of San Francisco, a California nonprofit public benefit corporation, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a nonprofit public benefit corporation hereinafter referred to as the "Authority," acting by and through its Director of Island Operations, hereinafter referred to as the "Director."

Recitals

WHEREAS, the Authority wishes to utilize the resources of the former Naval Station Treasure Island to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, the Contractor provides afterschool and summer activities for school aged youth and the Authority wishes to have such services provided on Treasure Island; and, WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by Authority as set forth under this Contract; Now, THEREFORE, the parties agree as follows:

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco ("City"). Charges will accrue only after prior written authorization certified by the Controller, and the amount of the Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to the Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority budget decisions are subject to the discretion of the Mayor, the Board of Supervisors and the Authority's Board of Directors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

Item 9(D) – EXHIBIT A

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from **July 1, 2008 to June 30, 2009**.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the **Tenth** day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Island Operations, in his or her sole discretion, concludes has been performed as of the **Final** day of the immediately preceding month. In no event shall the amount of this Agreement exceed **One Hundred and Forty Thousand Dollars and no cents (\$140,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "General Services & Budget," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by **the Authority** as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

a. The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority are not authorized to offer or promise, nor is the Authority required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

Item 9(D) – EXHIBIT A

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by Authority to Contractor shall be subject to audit by the Authority.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City and/or the Authority for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City and/or the Authority for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City or the Authority if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City or the Authority a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City or the Authority; (c) conspires to defraud the City or the Authority by getting a false claim allowed or paid by the City; or the Authority; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City or the Authority; or (e) is a beneficiary of an inadvertent submission of a false claim to the City or the Authority, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City or Authority within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties (Disallowance)

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may

Item 9(D) – EXHIBIT A

result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority’s reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority’s request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

Authority shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Authority, nor be entitled to participate in any plans, arrangements, or distributions by Authority pertaining to or in connection with any retirement, health or other benefits that Authority may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all

Item 9(D) – EXHIBIT A

obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

Should Authority, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

Item 9(D) – EXHIBIT A

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the US Navy, the Treasure Island Development Authority, and the City and County of San Francisco, their Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

**Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Director of Island Operations**

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to Authority certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to Authority, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Item 9(D) – EXHIBIT A

Contractor shall indemnify and save harmless Authority and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any claims against the Authority.

In addition to Contractor's obligation to indemnify Authority, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that Authority may have under applicable law.

18. Liability of Authority

AUTHORITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, Authority will suffer actual damages that will be impractical or

Item 9(D) – EXHIBIT A

extremely difficult to determine; further, Contractor agrees that the sum of **Five Hundred Dollars (\$500)** per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that Authority will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. Authority may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to deliver to Authority within the time fixed or such extensions of time permitted in writing by the Authority. .

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

Item 9(D) – EXHIBIT A

21. Termination for Convenience

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that Authority designates to be completed prior to the date of termination specified by Authority.

(7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

Item 9(D) – EXHIBIT A

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to Authority against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the Authority if it becomes aware of any such fact during the term of this Agreement.

Item 9(D) – EXHIBIT A

24. Proprietary or Confidential Information of Authority

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority. Contractor agrees that all information disclosed by Authority to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority: **Treasure Island Development Authority**
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Mirian Saez, Director of Island Operations
Fax: (415) 274-0299

To Contractor:

Boys & Girls Clubs of San Francisco
1950 Page Street
San Francisco, CA. 94117
Attn: Jennifer Berger, Director of Program Services
Fax: (415) 445-5402

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the

Item 9(D) – EXHIBIT A

Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after

Item 9(D) – EXHIBIT A

Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle Authority, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Authority upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City or the Authority.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement,

Item 9(D) – EXHIBIT A

and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the

Item 9(D) – EXHIBIT A

San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City and Authority premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between Authority and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that

Item 9(D) – EXHIBIT A

person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the

Item 9(D) – EXHIBIT A

then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the Authority's consideration for this Agreement. The Authority in its sole discretion shall determine whether such a breach has occurred. The Authority and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the Authority and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City and the Authority shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City and the Authority shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City or the Authority.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Item 9(D) – EXHIBIT A

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/ols. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City and Authority shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City or Authority.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City and Authority may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City or Authority has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

Item 9(D) – EXHIBIT A

- i. Contractor shall provide reports to the City and Authority in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City and Authority with access to records pertaining to compliance with HCAO after receiving a written request from Authority to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City and Authority to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City and Authority may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City and/or Authority when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City or Authority to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City or Authority to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

- (1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.
- (2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified

Item 9(D) – EXHIBIT A

economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Item 9(D) – EXHIBIT A

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Contractor agrees:

(1) To be liable to the City and/or the Authority for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the Authority's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the Authority, City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the Authority and City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the Authority and City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City and Authority suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Item 9(D) – EXHIBIT A

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City and/or the Authority by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the City and/or the Authority is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's and Authority's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City and the Authority may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City or Authority contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood

Item 9(D) – EXHIBIT A

containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Left blank by agreement of the parties (Supervision of Minors)

56. Severability

Item 9(D) – EXHIBIT A

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the Authority may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City’s and Authority’s property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor’s (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term “graffiti” means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner’s authorized agent, and which is visible from the public right-of-way. “Graffiti” shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

Item 9(D) – EXHIBIT A

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that Authority will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the Authority because of Contractor's failure to comply with this provision.

60. Left blank by agreement of the parties (Slavery Era Disclosure)

Item 9(D) – EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<p>TREASURE ISLAND DEVELOPMENT AUTHORITY</p> <p>By: _____</p> <p>Mirian Saez, Director of Island Operations Treasure Island</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____</p> <p>Deputy City Attorney</p>	<p>BOYS & GIRLS CLUBS OF SAN FRANCISCO, a California nonprofit corporation</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>_____</p> <p>Jennifer Berger, Director of Program Services, Boys & Girls Clubs of San Francisco</p> <p>City vendor number:</p>
---	---

Appendices

- A: Services to be provided by Contractor
B: Calculation of Charges

Item 9(D) – EXHIBIT A

Appendix A Services to be provided by Contractor

1. Description of Services

Much programming is around life-skills and staff consistently helps members understand healthy choices as they explore new activities, find areas of interest, set and reach individual goals. Virtues of caring, responsibility, respect, kindness, acceptance, commitment, service, honesty are expected of all youth and are evident everywhere in the Clubs. Core Program areas offer youth a wide range of activities and services to support their lives: daily homework completion and academic tutoring; literacy, math and science enhancement programs; financial literacy; community service and leadership clubs; sports instruction; inter-city sports leagues; nontraditional fitness activities; fine arts and crafts; age and gender specific health and life skills programs; social recreation and games; and technology.

A significant number of Club members struggle with multiple risk factors and need more assistance than our basic programming can provide. Behavioral Health Services has been piloted at two Clubs for three years. We will provide at least one part-time post-Masters Behavioral Health Specialist to serve children and youth at our Treasure Island Club in 2007.

Specific Services at the Treasure Island Boys & Girls Club are:

- 1) Daily educational support services.
- 2) Daily fitness, health and life skills activities.
- 3) Offer site-based youth development education support at Spring Valley and Flynn Schools (two schools where many of our Treasure Island members are bused).
- 4) Honoring our members in education accomplishments with mid-year and end-of-year ceremonies.
- 5) Provide tutors to work with youth twice a week each semester; this will take place in nine-week sessions; over the course of the year. Our young people will participate in 9-week tutoring sessions with an emphasis on increasing reading and literacy levels.
- 6) Provide part-time Behavioral Health Specialist position to address youth facing multiple risk factors.
- 7) Provide referrals to Project Discover, our high-end summer school.
- 8) Encourage participation in SMART Moves, our small group program that promotes resiliency and healthy decision-making.
- 9) Offer basketball clinics at the TI Gym.
- 10) Provide hands-on nutrition instruction for young people.
- 11) Offer Career Launch, a career and college exploration curriculum.
- 12) Send Treasure Island members to our residential summer camp, Camp Mendocino.
- 13) Provide an environmental education program. The summer environmental program will end with an Environmental Education Party at Ocean Beach with a beach clean-up and picnic.
- 14) Partner with the Treasure Island Sailing Center to provide Sailing Camp for Treasure Island members in summer months, culminating in Sailing Fun Days on Tuesdays.
- 15) Offer the Learn to Swim program at our Ernest Ingold Clubhouse located in the Western Addition, culminating in a swim party on August 9th.
- 16) Hold an Insect Discovery Lab on August 8th at the TI Community Center.
- 17) We are interviewing to hire a part-time Teen Services Coordinator. This person will facilitate the Teens Keystone Club, teen leadership club that works on Community Service Projects and Fundraising Projects to attend regional and national conferences as well as Career Launch, a career exploration and job readiness program, and College Prep Workshops.

Item 9(D) – EXHIBIT A

2. Reports

Contractor shall submit written reports as requested by the Treasure Island Development Authority.

Format for the content of such reports shall be determined by the Treasure Island Development Authority. The timely submission of all reports is a necessary and material term and condition of this Agreement.

The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Treasure Island Development Authority will be Director of Island

Item 9(D) – EXHIBIT A

Appendix B Calculation of Charges

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement as the Director of Island Operations, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed One Hundred and Forty Thousand Dollars (\$140,000).

Item 9(D) – EXHIBIT A

Projections for 2008-2009 Treasure Island

Funding Sources	TOTAL	TIDA
Term of Contract	July 2008-June 2009	July 2008-June 2009
Staff Positions		
Clubhouse Director	46,595	12,000
Program Manager	36,367	12,000
Educ/Tech Director	28,800	13,200
Behavioral Health	28,000	28,000
Athletic/Teen Services Director (FT)	28,000	24,000
Teen Services Coordinator (PT)	19,600	7,200
Outdoor Ed and Arts (PT)	18,200	0
Director of Prog. Services (20%)	13,600	0
City Wide Education Director (15%)	6,563	0
Director of Program Services (10%)	6,700	0
Custodian (PT)	10,300	0
Teen Staff	<u>5,000</u>	<u>0</u>
Total Salaries	247,725	96,400
Taxes & Benefits (30%)	74,317	28,920
Dance Instructors/Tennis Instructors	0	0
Supplies		
Program Supplies	6,000	0
Food	3,200	0
Office/First Aide Supplies	1,900	0
Teen Activities/Field Trips/Camp Fees	400	0
Awards	200	0
T Shirts	300	0
Volunteer & Staff Recognition	<u>200</u>	<u>0</u>
Total Supplies	12,200	0
Telephones	3,800	0
Postage & Printing & PR	850	0
Transportation/Vans/Rentals	3,550	0
Staff Development	2,500	0
Occupancy	10,400	0
Equipment Rental	3,000	0
Youth Scholarship (Youth of the Year)	500	0
Administrative Cost (15%)	<u>48,366</u>	<u>14,680</u>
		12%
TOTALS	370,808	140,000

Item 9(D) – EXHIBIT A

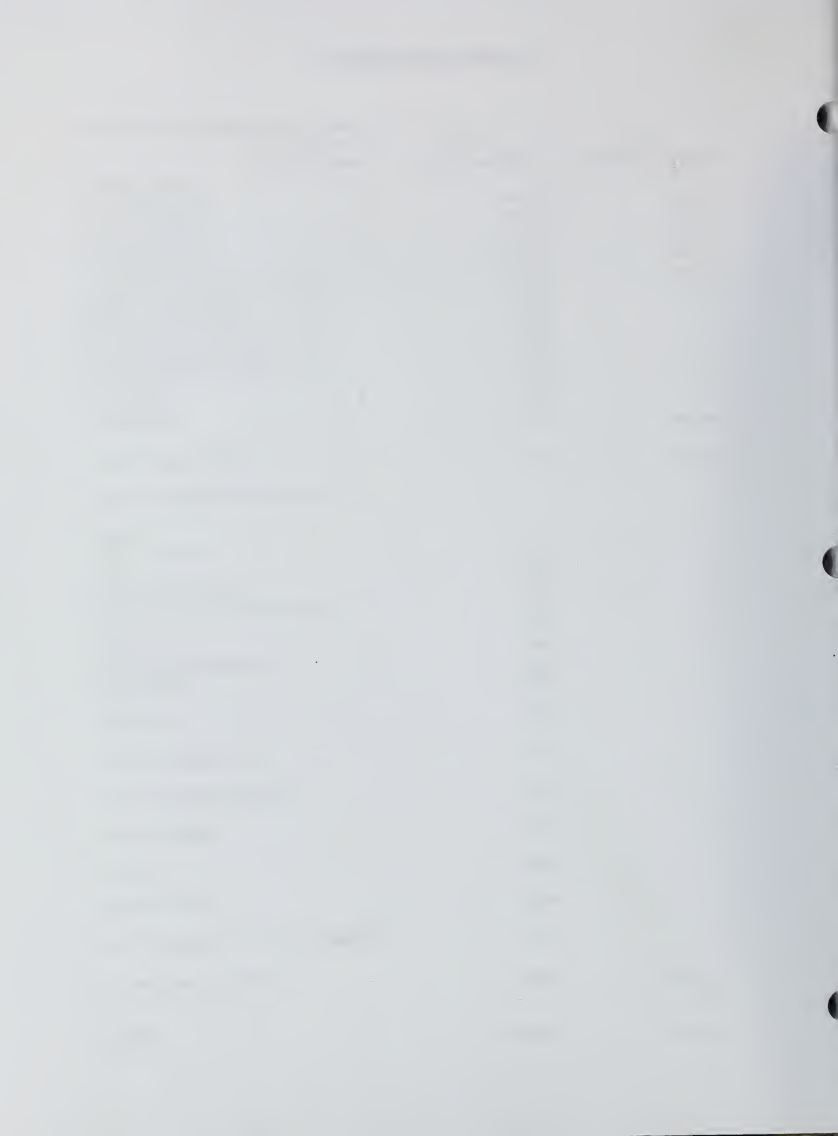


EXHIBIT B

Boys & Girls Clubs of San Francisco 2007-2008 Treasure Island Accomplishments

This short narrative will outline the services the Treasure Island Boys & Girls Club provided to young people from July 1, 2007 to June 3, 2008. With an allocation of \$100,000 provided by TIDA, we were able to accomplish the following:

Our daily education support services included Power Hour, using Buddy System tutors; Make it Happen, also using Buddy System tutors; Think Tank, our literacy tutoring program; Achievement Matters, our academic case management program; and Kidzlit; Kidzmath and Science Explorers.

Daily fitness, health and life skills activities were provided through a variety of individuals including our Health and Fitness Coordinator, our Citywide Health and Fitness Director, and our Social Recreation Coordinator. Activities conducted included HYPE (Healthy Youth Promoting Exercise), as well as various other activities such as Cavity Free Zone, Rethink Your Drink, Soda Free Summer, Snackademic, Basketball and Football leagues, volleyball programs and other gym activities.

Our site-based youth development education support at Spring Valley and Flynn Schools included literacy games, math games, basic skill exercises/games. At Flynn our Education Director attended twice weekly to offer programs such as Kidzlit, Book Club, Science Explorers. In February one of our Tutors assumed these responsibilities as our Education Director was promoted to Program Manager. At Spring Valley our Social Recreation Coordinator offered non-traditional sports activities one time per week at recess. Both principals were invited to parent meetings and our Youth of the Year Celebration.

We held mid-year and end-of the year ceremonies for our Achievement Matters participants as well as mini-camps (where we recognized our participants) throughout the year for Think Tank and a graduation ceremony for Think Tank.

Through Think Tank we provided tutors to work with youth three times a week/three groups per day. We were able to offer three separate 9-week tutoring sessions and a summer session with an emphasis on increasing reading and literacy levels. Approximately 25 students participated in these programs.

Our part-time Behavioral Health Specialist supports the Clubhouse Director with school visits and various behavioral issues at the clubhouse. This has helped us work with our youth who to address multiple risk factors. In turn, this has had a positive impact on our youth and their families, the clubhouse and the community.

Eight of our youth have been accepted to participate in Project Discover, our high-end summer school. This program begins in late June.

EXHIBIT B

Boys & Girls Clubs of San Francisco 2007-2008 Treasure Island Accomplishments

We had twelve youth participate in SMART Moves, our small group program that promotes resiliency and healthy decision-making.

Our Health and Fitness Director and Social Recreation Director offered basketball clinics and league play at the TI Gym (YMCA provides us with ongoing facility support in this effort). Once this year we also offered a citywide basketball clinic.

We provided hands-on nutrition instruction for our youth through formal nutrition programs run twice a year by our Health and Fitness Director and/or our Citywide Health and Fitness Director as well as informal nutrition programs such as a healthy cooking class once a week.

We offered Career Launch, a career and college exploration curriculum through our Make It Happen program as well as our Education, Career and Achievement Program and formal mentorship.

We sent more than 30 of our members to our residential summer camp, Camp Mendocino.

We provided an environmental education program called Enviromaniacs. This program included a citywide environmental education celebration on TI. The youth were involved in a TI beach visit/clean-up. At this activity the youth received food, awards and recognition for their participation. One of their activities included creating environmental superheroes and creating comic books about these superheroes.

We partnered with the TI Sailing Center to provide Sailing Camp for ten TI members in summer months culminating with Sailing Fun Days on Tuesdays during the summer. In addition, six members participated during the school year.

Ten of our members participated in the Learn to Swim program at our EI Clubhouse located in the Western Addition culminating in a swim party on August 9.

We partnered with San Francisco Public Library (Bookmobile) to provide hands-on Insect Discovery workshops for our members on August 8 at the TI Community Center. In these workshops our members learned about and touched/held insects.

We hired a full-time Teen Director. This person worked collaboratively with our Education Director to facilitate the Teens Keystone Club.

AGENDA ITEM 9(E)
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with Toolworks, Inc., to Provide Janitorial Services Commencing July 1, 2008 and Expiring on June 30, 2009 (Action Item)

Contact: Mirian Saez, Director of Island Operations
Phone: (415) 274-0660

BACKGROUND

Toolworks, Inc. ("Toolworks"), a California nonprofit public benefit corporation and a member organization of the Treasure Island Homeless Development Initiative ("TIHDI"), provides training and employment development services that increase economic opportunities for economically-disadvantaged people with disabilities. Most of Toolworks' trainees are homeless. Trainees are recruited through the TIHDI Job Broker Program and through the Homeless Employment Collaborative. One of Toolworks' programs is contractual janitorial services. The Treasure Island Development Authority Purchasing Policy and Procedures authorize non-competitive negotiations for contracts that are in furtherance of the Homeless Assistance Agreement between the Authority and TIHDI. Therefore, the janitorial services contract with Toolworks has been awarded on a non-competitive negotiated basis.

Toolworks has developed a specific training program for Treasure Island. Toolworks has one fulltime supervisor dedicated to Treasure Island. This person trains and supervises the work of four trainees who work five hours a day, five days a week for 10 weeks. The trainees are then assisted in finding fulltime janitorial jobs. Toolworks gives priority placement in this program to Treasure Island residents.

Janitorial services are required for the Treasure Island Project offices and the special event venues. Since the event venues often are booked for both Saturdays and Sundays, janitorial services are sometimes needed upon request seven days a week. Under the proposed contract Toolworks provides janitorial services to the Project Offices, all Administration Building occupants, except the US Navy as well as cleaning of the Casa de la Vista and the Chapel. Cleaning of the Guardhouse has been deleted because that facility has been subleased and is therefore no longer the responsibility of the Authority. This is a "full service" contract, meaning Toolworks provides janitorial services as well as paper products, cleaning supplies and equipment. Routine services are for five days a week for an amount not to exceed Eight Thousand Seven Hundred and Fifty (\$8,750) per month or One Hundred and Five Thousand Dollars (\$105,000) for the period from July 1, 2008 through June 30, 2009. The contract also provides for \$45,000 for as-needed janitorial services.

BUDGET IMPACT

The Toolworks budget for FY 2007-2008 was \$150,000. This amount provided sufficient funds for Toolworks' services. While the guardhouse was deleted from the scope of work for FY 2008-2009, the increases in scope associated with new tenancies in the Administration Building have resulted in a similar workload. As a result, there is no change in the amount budgeted for Toolworks services.

RECOMMENDATION

Staff recommends approval of the contract for janitorial services with Toolworks from July 1, 2008 through June 30, 2009 for an amount not to exceed \$150,000.

EXHIBITS

A Professional Services Agreement between the Treasure Island Development Authority and Toolworks, Inc.

Prepared by Marc McDonald, Facilities Manager

For Mirian Saez, Director of Island Operations

1 [TOOLWORKS CONTRACT]
2

3 **RESOLUTION AUTHORIZING THE DIRECTOR OF ISLAND OPERATIONS TO EXECUTE**
4 **A PROFESSIONAL SERVICES AGREEMENT WITH TOOLWORKS, INC. TO PROVIDE**
5 **JANITORIAL SERVICES COMMENCING JULY 1, 2008 AND EXPIRING JUNE 30, 2009.**

6 WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island
7 and Yerba Buena Island (together, the "Base"), which is currently owned by the United States
8 of America ("the Federal Government"); and,

9 WHEREAS, The Base was selected for closure and disposition by the Base
10 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
11 subsequent amendments; and,

12 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
13 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
14 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
15 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
16 conversion of the Base for the public interest, convenience, welfare and common benefit of
17 the inhabitants of the City and County of San Francisco; and,

18 WHEREAS, Under the Treasure Island Conversion Act of 1997 (the "Act"), which
19 amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to
20 Chapter 1333 of the Statutes of 1968, the California Legislature (i) designated the Authority as
21 a redevelopment agency under California redevelopment law with authority over the Base
22 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the
23 Base which are subject to the Tidelands Trust, vested in the Authority the authority to
24 administer the public trust for commerce, navigation and fisheries as to such property; and,
25

1 WHEREAS, On February 6, 1998, the Board of Supervisors adopted Resolution No.
2 43-98 approving the designation of the Authority as a redevelopment agency for Treasure
3 Island and Yerba Buena Island; and,

4 WHEREAS, The Authority has negotiated and endorsed a proposed Base Closure
5 Homeless Assistance Agreement and Option to Lease Real Property (the "Homeless
6 Assistance Agreement") with the Treasure Island Homeless Development Initiative ("TIHDI"),
7 a consortium of California nonprofit corporations organized to utilize the resources of the Base
8 to help fill gaps in the continuum of care for homeless persons and families, pursuant to the
9 Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

10
11 WHEREAS, The Authority wishes to support TIHDI pursuant to the Base Closure
12 Community Redevelopment and Homeless Assistance Act of 1994; and,

13 WHEREAS, Toolworks, Inc. is a California nonprofit corporation and a member
14 organization of TIHDI, and Toolworks, Inc. has represented and warranted that it is qualified
15 to perform the janitorial and other building maintenance services required by the Authority as
16 set forth under the proposed contract; and,

17 WHEREAS, The Authority's purchasing policy and procedures authorize non-
18 competitive negotiations for contracts in furtherance of the Homeless Assistance Agreement;
19 and,

20 WHEREAS, On September 1, 2004, the Authority and Toolworks, Inc. entered into an
21 agreement for janitorial and other building maintenance services on the former Base (the
22 "Original Agreement"); and,
23
24
25

1 WHEREAS, On June 8, 2005, the Authority authorized a First Amendment to the
2 Original Agreement to modify the scope of work and budget for services for a 12 month period
3 that expired on June 30, 2006; and,

4 WHEREAS, On July 26, 2006, the Authority authorized a Second Amendment to the
5 Original Agreement to modify the scope of work and budget for services for a 12 month period
6 that expired on June 30, 2007; and,

7 WHEREAS, On June 13, 2007, the Authority authorized Project Staff to enter into an
8 Agreement for Professional Services with Toolworks for janitorial and other building
9 maintenance services on the former Base for the 12 month period from July 1, 2007 though
10 June 30, 2008; and,

11 WHEREAS, The Authority has negotiated with Toolworks, Inc. to reach agreement on
12 the terms of a new Professional Services Agreement (the "Agreement") in an amount not to
13 exceed One Hundred Fifty Thousand Dollars (\$150,000), which (i) describes the scope of
14 work for the services shown in Appendix B-1 of the Agreement attached to this resolution as
15 Exhibit A, and (ii) establishes the term of the Agreement for a period of 12 months
16 commencing July 1, 2008 and expiring on June 30, 2009; now, therefore be it
17

18 RESOLVED, That the Authority hereby authorizes the Director of Island Operations or
19 her designee to execute the Agreement with Toolworks effective July 1, 2008, for an amount
20 not to exceed One Hundred and Fifty Thousand Dollars (\$150,000), in substantially the form
21 attached hereto as Exhibit A; and be it

22 FURTHER RESOLVED, That the Board of Directors hereby authorizes the Director of
23 Island Operations or her designee to enter into any additions, amendments or other
24 modifications to the Agreement that the Director of Island Operations or her designee
25 determines in consultation with the City Attorney are in the best interests of the Authority, that

1 do not materially increase the obligations or liabilities of the Authority, that do not materially
2 reduce the rights of the Authority, and are necessary or advisable to complete the preparation
3 and approval of the Agreement, such determination to be conclusively evidenced by the
4 execution and delivery by the Director of Island Operations or her designee of the documents
5 and any amendments thereto.

6 **CERTIFICATE OF SECRETARY**

7
8 **I hereby certify that I am the duly elected and acting Secretary of the Treasure**
9 **Island Development Authority, a California nonprofit public benefit corporation, and**
10 **that the above Resolution was duly adopted and approved by the Board of Directors**
11 **of the Authority at a properly noticed meeting on June 11, 2008.**

12 Owen Stephens, Secretary
13
14
15
16
17
18
19
20
21
22
23
24
25

ITEM 9E – EXHIBIT A

EXHIBIT A

**Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, California 94130**

Agreement between the Treasure Island Development Authority and

TOOLWORKS, INC.

This Agreement is made this 1ST day of July, 2008, in the City and County of San Francisco, State of California, by and between Toolworks, Inc., a California nonprofit public benefit corporation, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a nonprofit public benefit corporation hereinafter referred to as the "Authority," acting by and through its Director of Island Operations, hereinafter referred to as the "Director."

Recitals

WHEREAS, the Authority wishes to utilize the resources of the former Naval Station Treasure Island to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, the Authority wishes to procure janitorial services at Naval Station Treasure Island; and,

WHEREAS, Janitorial and other building maintenance services are identified in the Homeless Component of the Treasure Island Reuse Plan as one of the economic development opportunities available to assist homeless and other economically disadvantaged San Franciscans; and,

WHEREAS, The Authority's Purchasing Policy and Procedures authorize non-competitive negotiations for contracts that are in furtherance of the Homeless Assistance Agreement between the Authority and the Treasure Island Homeless Development Initiative ("TIHDI") including any TIHDI member organizations for contracts for economic development opportunities identified in the Reuse Plan; and,

WHEREAS, Contractor, a member organization of TIHDI, provides janitorial services that increase economic opportunities for economically-disadvantaged people and people with disabilities; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by Authority as set forth under this Contract;

ITEM 9E – EXHIBIT A

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco ("City"). Charges will accrue only after prior written authorization certified by the Controller, and the amount of the Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to the Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority budget decisions are subject to the discretion of the Mayor, the Board of Supervisors and the Authority's Board of Directors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from **July 1, 2008 to June 30, 2009**.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the Tenth day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Island Operations, in his or her sole discretion, concludes has been performed as of the Final day of the immediately preceding month. In no event shall the amount of this Agreement exceed One Hundred and Fifty Thousand Dollars and no cents (\$150,000). The breakdown of costs associated with this Agreement appears in Appendix B, "General Services & Budget," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Authority as being in accordance with this Agreement. Authority may withhold payment to

ITEM 9E – EXHIBIT A

Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

6. **Guaranteed Maximum Costs**

a. The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority are not authorized to offer or promise, nor is the Authority required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. **Payment; Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by Authority to Contractor shall be subject to audit by the Authority.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

8. **Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City and/or the Authority for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City and/or the Authority for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City or the Authority if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City or the Authority a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City or the Authority; (c) conspires to defraud the City or the Authority by getting a false claim allowed or paid by the City or the Authority; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City or the Authority; or (e) is a beneficiary of an inadvertent submission of a false claim to the City or the Authority, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City or Authority within a reasonable time after discovery of the false claim.

ITEM 9E – EXHIBIT A

9. Left blank by agreement of the parties (Disallowance)

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority’s reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority’s request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

ITEM 9E – EXHIBIT A

13. Responsibility for Equipment

Authority shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Authority, nor be entitled to participate in any plans, arrangements, or distributions by Authority pertaining to or in connection with any retirement, health or other benefits that Authority may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

Should Authority, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

ITEM 9E – EXHIBIT A

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the US Navy, the Treasure Island Development Authority, and the City and County of San Francisco, their Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Director of Island Operations

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

ITEM 9E – EXHIBIT A

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to Authority certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to Authority, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Contractor shall indemnify and save harmless Authority and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any claims against the Authority.

In addition to Contractor's obligation to indemnify Authority, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that Authority may have under applicable law.

ITEM 9E – EXHIBIT A

18. Liability of Authority

AUTHORITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of Five Hundred Dollars (\$500) per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that Authority will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. Authority may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to deliver to Authority within the time fixed or such extensions of time permitted in writing by the Authority.

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take

ITEM 9E – EXHIBIT A

advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that Authority designates to be completed prior to the date of termination specified by Authority.

ITEM 9E – EXHIBIT A

(7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to Authority against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

ITEM 9E – EXHIBIT A

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the Authority if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of Authority

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority. Contractor agrees that all information disclosed by Authority to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority: **Treasure Island Development Authority**
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Mirian Saez, Director of Island Operations
Fax: (415) 274-0299

To Contractor: **Toolworks, Inc.**
25 Kearny Street, Suite 400
San Francisco, CA. 94108
Attn: Steven Crabel, Executive Director
FAX (415)733-0991

Any notice of default must be sent by registered mail.

26. Ownership of Results

ITEM 9E – EXHIBIT A

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time

ITEM 9E – EXHIBIT A

designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

- a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.
- b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.
- c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.
- d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle Authority, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this

ITEM 9E – EXHIBIT A

Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Authority upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City or the Authority.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered

ITEM 9E – EXHIBIT A

with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City and Authority premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

ITEM 9E – EXHIBIT A

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between Authority and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor.

ITEM 9E – EXHIBIT A

Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the Authority's consideration for this Agreement. The Authority in its sole discretion shall determine whether such a breach has occurred. The Authority and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the Authority and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City and the Authority shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to

ITEM 9E – EXHIBIT A

pursue such cure to completion, the City and the Authority shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City or the Authority.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/ols. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City and Authority shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City or Authority.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City and Authority may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City or Authority has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

ITEM 9E – EXHIBIT A

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City and Authority in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City and Authority with access to records pertaining to compliance with HCAO after receiving a written request from Authority to do so and being provided at least ten business days to respond.

k. Contractor shall allow City and Authority to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City and Authority may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City and/or Authority when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City or Authority to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City or Authority to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

ITEM 9E – EXHIBIT A

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the

ITEM 9E – EXHIBIT A

requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

- (6) Set the term of the requirements.
- (7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.
- (8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
- (9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Contractor agrees:

- (1) To be liable to the City and/or the Authority for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the Authority's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the Authority, City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the Authority and City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the Authority and City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly

ITEM 9E – EXHIBIT A

withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City and Authority suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City and/or the Authority by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the City and/or the Authority is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's and Authority's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of

ITEM 9E – EXHIBIT A

this section, the City and the Authority may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City or Authority contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

ITEM 9E – EXHIBIT A

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Left blank by agreement of the parties (Supervision of Minors)

56. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the Authority may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's and Authority's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure,

ITEM 9E – EXHIBIT A

marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that Authority will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the Authority because of Contractor's failure to comply with this provision.

60. Left blank by agreement of the parties (Slavery Era Disclosure)

ITEM 9E – EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

TREASURE ISLAND DEVELOPMENT AUTHORITY	CONTRACTOR TOOLWORKS, INC.
By: _____ Mirian Saez, Director of Island Operations Treasure Island	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
Approved as to Form: Dennis J. Herrera City Attorney	I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.
By: _____ Deputy City Attorney	_____ STEVEN CRABIEL, EXECUTIVE DIRECTOR, 25 KEARNY STREET, SUITE 400 SAN FRANCISCO, CA 94108 FEIN 94-2493384 PHONE – (415) 733-0330 FAX (415)733-0991 City vendor number: 46565

Appendices

- A: Services to be provided by Contractor
B: Calculation of Charges

ITEM 9E – EXHIBIT A

Appendix A Services to be provided by Contractor

1. Description of Services

REASURE ISLAND DEVELOPMENT AUTHORITY Toolworks Scope of Work

Site: Administration Building at 410 Avenue of the Palms,
Chapel,
Casa de la Vista,

Contact: Project Manager - Mike Oxley, 415-956-1121
Administrative: Supervisor - Rob Arbo, 415-733-0990 ext 652

Hours of Operation: Monday through Friday, 7 a.m.-12:00 noon

Keys: Project Manager and Program Coordinator have keys to the office, and the file cabinet. All other keys are locked in the Toolworks office cabinet. Keys include:

- Paper towel dispensers
- Toilet paper dispensers
- Administration Building: Building Master Key
- Guard House
- Casa de la Vista
- Chapel

Under the supervision of the Project Manager (Mike Oxley) - routine work is performed by a crew from 7 a.m.-12 p.m. daily, Monday through Friday, with the exception of holidays, as observed by the City and County of San Francisco. A courtesy of 48 hour notice is requested, whenever possible, for the venues which are not routinely cleaned or for additional cleaning needs of the above venues.

DAILY TASKS

(Subject to change with prior notice)

ITEM 9E – EXHIBIT A

First Floor

John Stewart Office
Treasure Island Homeless Development Initiative Offices
David Gibson and SherriLynn Wood
Caltrans

- **Duties**

Trash

Collect trash from small cans into one large clean bag

Replace trash liners as necessary

Dust furniture and horizontal surfaces below 72 inches

Empty recycling containers into appropriate recycling bin

Vacuum daily

First Floor Restrooms

Women's Restroom

Sweep and damp mop floor

Clean sink and counter with general purpose clean

Clean mirror with glass cleaner

Disinfect toilets

Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems

Toilet paper

Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office

Paper dispensers

Spot clean walls

Reports all incidents of leaks or obvious maintenance issues to management

Men's Restroom

Sweep floor and damp mop floor.

Clean sink with general purpose cleaner.

Clean mirror with glass cleaner.

Clean urinals and toilets with cleanser and disinfectant

Periodically check to see that all toilets are functioning. If clogged, use plunger or inform Project Manager for serious problems.

Toilet paper

Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office.

Paper dispensers

Spot clean walls

Reports all incidents of leaks or obvious maintenance issues to management

ITEM 9E – EXHIBIT A

Second Floor

Treasure Island Development Authority Offices
Room 201 (Wine Valley Catering)

Trash

Collect trash from small cans into one large clean bag.

Replace trash liners as necessary

Empty recycling containers into appropriate recycling bin

Vacuum daily

Dust furniture and horizontal surfaces below 72 inches

Second Floor Restrooms

Sweep and damp mop floor

Clean sink and counter with general purpose clean

Clean mirror with glass cleaner

Disinfect toilets

Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems

Toilet paper

Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office

Paper dispensers

Spot clean walls

Reports all incidents of leaks or obvious maintenance issues to management

Third Floor

David Gibson and SherriLynn Wood Office

• **Duties**

Trash

Collect trash from small cans into one large clean bag

Replace trash liners as necessary

Dust furniture and horizontal surfaces below 72 inches

Empty recycling containers into appropriate recycling bin

Vacuum daily

ITEM 9E – EXHIBIT A

Miscellaneous daily service

Policing of Administration Building will be done for debris and trash.

Per special request

The Casa de la Vista: Perform janitorial services as requested but at least once per week. ***Duties as assigned by the Treasure Island Development Authority Facilities Manager. As time permits, may include any combination of the following:***

Cleaning of windows

Carpet cleaning/ spot cleaning

Polish brass

Vacuum

Trash

Collect trash from small cans into one large clean bag

Replace trash liners as necessary

Police exterior for large debris – sweep as needed

Bathrooms (2)

Sweep and damp mop floor

Clean sink and counter with general purpose clean

Clean mirror with glass cleaner

Disinfect toilets

Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems

Toilet paper

Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office

Paper dispensers

Spot clean walls

Reports all incidents of leaks or obvious maintenance issues to management

Kitchen

Clean and polish grill and stove

Clean and polish all horizontal surfaces

Sweep and mop floors

The Chapel: Perform janitorial services as requested, but at least once per week ***Duties as assigned by Treasure Island Development Authority Facilities Manager. As time permits, may include any combination of the following:***

Vacuum all rugs

Sweep and damp mop all hard floors

Polish pews

Cleaning interior windows

Dust all furniture and horizontal surfaces below 72 inches

Trash

Collect trash from small cans into one large clean bag

Replace trash liners as necessary

Police exterior of Chapel for large debris – sweep as needed

ITEM 9E – EXHIBIT A

Bathrooms (4)

Sweep and damp mop floor

Clean sink and counter with general purpose clean

Clean mirror with glass cleaner

Disinfect toilets

Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems

Toilet paper

Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office

Paper dispensers

Spot clean walls

Nimitz House: Perform janitorial services as requested/directed by TIDA ***As time permits, may include any combination of the following:***

Sweep and damp mop all floors

Wash windows as directed

Sweep and damp mop floors

Dust furniture and horizontal surfaces below 72 inches

Bathrooms (as directed by TIDA)

Clean sink and counter with general purpose clean

Clean mirror with glass cleaner

Disinfect toilets

Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems

Toilet paper

Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office

Paper dispensers

Spot clean walls

Other duties as assigned by TIDA

Nimitz Conference Center: Perform janitorial services as requested/directed by TIDA ***As time permits, may include any combination of the following:***

Sweep and damp mop all floors

Wash windows as directed

Sweep and damp mop floors

Dust furniture and horizontal surfaces below 72 inches

Bathrooms (as directed by TIDA)

Clean sink and counter with general purpose clean

Clean mirror with glass cleaner

Disinfect toilets

Periodically check to see that all toilets are functioning properly. If clogged, use plunger or inform Project Manager for serious problems

Toilet paper

Check toilet paper supplies in men and women's restrooms and replenish with rolls from janitorial supply closet in office

Paper dispensers

ITEM 9E – EXHIBIT A

Spot clean walls

Reports all incidents of leaks or obvious maintenance issues to management

Other duties as assigned by TIDA

Periodic work

Once a week:

Damp mop entrance lobbies and stairways Building 1

Spot clean carpets Casa de La Vista

Sweep/vacuum stairways of Building 1

Once a month:

Damp mop all hard floors in Building One traffic areas

Thorough vacuuming on used areas carpets

Thorough dusting

Polish brass hand railings on staircases

Quarterly:

Polish brass entrance doors Building 1

Casa de la Vista and the Chapel-polish all brass

Dust mop hard floors

Spot clean carpets Casa de La Vista

AS NEEDED or WHENEVER TIME PERMITS

Sweep the outside sidewalk of Building One

Sweep and damp mop stair wells inside Building One

Shine chrome of banisters with the window cleaner

Wash windows of doors

Air Traffic Control Tower, sweep, clean, dust

* Spot cleaning is defined as a small number of spots, each of which is no bigger than two inches in diameter.

TASKS SPECIFICALLY EXCLUDED ARE

Carpet cleaning

Upholstery cleaning

Cleaning of ceiling light fixtures

Changing light bulbs

Window Washing

ADDITIONAL SERVICES can be negotiated on an as needed basis at a rate of \$30.00/hour. Additional work that is performed in the evenings and/or weekends is at a rate of \$30.00/hour.

ADDITIONAL ROUTINE WORK to the Administration Building for areas not outlined above can be negotiated at a rate of \$0.13 per square foot per month.

ITEM 9E – EXHIBIT A

2. Reports

Contractor shall submit written reports as requested by the **Treasure Island Development Authority**. Format for the content of such reports shall be determined by the **Treasure Island Development Authority**. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the **Treasure Island Development Authority** will be **Director of Island Operations**.

ITEM 9E – EXHIBIT A

Appendix B Calculation of Charges

For an amount not to exceed \$8,750 per month, or \$105,000 for the period from July 1, 2008 through June 30, 2009, Contractor will provide:

- Routine janitorial services as defined in the Scope of Work
- Cleaning equipment, materials and supplies
- Soap, toilet paper, hand towels, seat covers for all restrooms and kitchens in all venues
- Uniform soap and paper goods dispensers for all restrooms and kitchens in all venues
- Transport of equipment and personnel among venues

For an amount not to exceed \$25,000 per year at the specific request of Facilities Manager, or Director of Island Operations:

- Carpet cleaning @ \$40.00 per 500 square feet (500 sf minimum service area)
- Additional window cleaning @ \$30.00 per hour
- Additional janitorial services @ \$30.00 per hour

Contingency fee for an amount not to exceed \$20,000, to be granted solely upon approval of Director of Island Operations.

Contract Value not to exceed \$150,000; Should the Director of Island Operations wish, however, to add routine work for areas not currently under the Scope of Work, the work will be provided for an additional \$0.13 per square foot per month.

AGENDA ITEM 9(F)
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Authorizing the Twenty Ninth Amendment to the Land and Structures Master Lease Number N6247499RP42P12 between the Authority and the Navy to include Buildings 92, 258 and associated lots in the Leased Premises (Action Item)

Contact: Richard A. Rovetti

Phone: 415-274-3365

BACKGROUND

On November 19, 1998, the Treasure Island Development Authority (hereafter referred to as "TIDA") entered into Lease Number N6247499RP42P12 (hereafter referred to as the "Land and Structures Master Lease") with the United States of America, acting by and through the Department of the Navy, for use of certain real property located at the former Naval Station, Treasure Island. Over the past nine years, TIDA and the United States Navy have amended the Land and Structures Master Lease twenty eight times.

There has been a significant level of interest in subleasing additional properties on Treasure Island for the purpose of storage. In an effort to accommodate these requests in a timely manner, and to increase sublease revenue, TIDA has asked the Navy to agree to incorporate Buildings 92, 258 and associated lots into the Leased Premises of the Land and Structures Master Lease. The Navy has assented to this request.

RECOMMENDATION

TIDA staff recommends that the TIDA Board of Directors approve the proposed Twenty Ninth Amendment to Lease Agreement N6247499RP42P12 with the United States Navy to include Buildings 92, 258 and associated lots into the Leased Premises and authorize the Director of Island Operations or her designee to execute said amendment to the Land and Structures Master Lease.

EXHIBIT

Exhibit A: Twenty Ninth Amendment to Lease Number N6247499RP42P12

Prepared by: Richard A. Rovetti, Leasing Manager
For: Mirian Saez, Director of Island Operations

[Amendment to Land and Structures Master Lease]

Resolution Authorizing the Twenty Ninth Amendment to the Land and Structures Master Lease Number N6247499RP42P12 between the Authority and the Navy to include Buildings 92, 258 and associated lots in the Leased Premises.

WHEREAS, Former Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America, acting by and through the Department of the Navy (the "Navy"); and,

WHEREAS, The Base was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, On November 19, 1999, the Authority entered into the Land and Structures Master Lease Number N6247499RP42P12 (the "Land and Structures Master Lease") with the Navy for use of certain real property located at the Base; and,

WHEREAS, The Land and Structures Master Lease enables the Authority to sublease portions of the master leased area for interim uses and generate revenues to support the interim uses and the future redevelopment of the Base; and,

WHEREAS, To accommodate the increased level of interest in subleasing additional properties on Treasure Island for the purpose of storage, and to generate additional revenues

1 for the Authority, the Authority has asked the Navy and the Navy has agreed to incorporate
2 Buildings 92, 258 and associated lots into the Leased Premises of the Land and Structures
3 Master Lease; now, therefore, be it

4 RESOLVED, That the Board of Directors hereby approves the Twenty Ninth
5 Amendment to Lease Agreement N6247499RP42P12 (the "Twenty Ninth Amendment") with
6 the Navy to include Buildings 92, 258 and associated lots into the Leased Premises and
7 authorizes the Director of Island Operations or her designee to execute the Twenty Ninth
8 Amendment in substantially the form attached hereto as Exhibit A; and be it

9 FURTHER RESOLVED, That the Board of Directors hereby authorizes the Director of
10 Island Operations to enter into any additions, amendments or other modifications to the
11 Twenty Ninth Amendment that the Director of Island Operations determines in consultation
12 with the City Attorney are in the best interests of the Authority, that do not materially increase
13 the obligations or liabilities of the Authority, that do not materially reduce the rights of the
14 Authority, and are necessary or advisable to complete the preparation and approval of the
15 Twenty Ninth Amendment, such determination to be conclusively evidenced by the execution
16 and delivery by the Director of Island Operations of the documents and any amendments
17 thereto.

1
2 **CERTIFICATE OF SECRETARY**

3 I hereby certify that I am the duly elected Secretary of the Treasure Island
4 Development Authority, a California nonprofit public benefit corporation, and that the
5 above Resolution was duly adopted and approved by the Board of Directors of the
6 Authority at a properly noticed meeting on June 11, 2008.
7

8
9 Owen Stephens, Secretary
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TWENTY NINTH AMENDMENT
TO LEASE AGREEMENT N6247499RP42P12
BETWEEN

THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this _____ day of _____ 2008, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 19 November 1999, entered into Lease Agreement N6247499RP42P12 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6247499RP42P12 are hereby amended to reflect the following changes;

1. Paragraph 34 **SPECIAL PROVISIONS:**

INSERT to EXHIBIT C:

"Final Finding of Suitability to Lease Reuse Zone 5A, Parcels T048, T049, T050, T055, T057, T058, T065, T066, T067, T069, T117, and portions of Parcels T041, T042, and T056, at Naval Station Treasure Island, San Francisco, California. June 1999. As shown in Exhibit "C-1" attached hereto and made part hereof."

2. Paragraph 1 **LEASED PREMISES** add the following:

"Use of Buildings 92, 258 and associated lots as shown in Exhibit A-12, attached hereto and made a part hereof."

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

TREASURE ISLAND DEVELOPMENT
AUTHORITY

Title _____

Title _____

APPROVED AS TO FORM:

CITY ATTORNEY



AGENDA ITEM 9(G)
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Authorizing the Twenty First Amendment to the South Waterfront Master Lease Number N6247498RP00P99 between the Authority and the Navy to include Buildings 7, 41, 289, 290, 530 and associated lots in the Leased Premises (Action Item)

Contact: Richard A. Rovetti

Phone: 415-274-3365

BACKGROUND

On September 4, 1998, the Treasure Island Development Authority (hereafter referred to as "TIDA") entered into Lease Number N6247498RP00P99 (hereafter referred to as the "South Waterfront Master Lease") with the United States of America, acting by and through the Department of the Navy, for use of certain real property located at the former Naval Station, Treasure Island. Over the past nine years, TIDA and the United States Navy have amended the South Waterfront Master Lease twenty times.

There has been a significant level of interest in subleasing additional properties on Treasure Island for the purpose of storage. In an effort to accommodate these requests in a timely manner, and to increase sublease revenue, TIDA has asked the Navy to agree to incorporate Buildings 7, 41, 289, 290, 530 and associated lots in the Leased Premises of the South Waterfront Master Lease. The Navy has assented to this request.

RECOMMENDATION

TIDA staff recommends that the TIDA Board of Directors approve the proposed Twenty First Amendment to Lease Agreement N6247498RP00P99 with the United States Navy to include Buildings 7, 41, 289, 290, 530 and associated lots into the Leased Premises and authorize the Director of Island Operations or her designee to execute said amendment to the Land and Structures Master Lease.

EXHIBIT

Exhibit A: Twenty First Amendment to Lease Number N6247498RP00P99

Prepared by: Richard A. Rovetti, Leasing Manager
For: Mirian Saez, Director of Island Operations

[Amendment to South Waterfront Master Lease]

Resolution Authorizing the Twenty First Amendment to the South Waterfront Master Lease Number N6247498RP00P99 between the Authority and the Navy to include Buildings 7, 41, 289, 290, 530 and associated lots in the Leased Premises.

WHEREAS, Former Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America, acting by and through the Department of the Navy (the "Navy"); and,

WHEREAS, The Base was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and

WHEREAS, On September 4, 1998, the Authority entered into the South Waterfront Master Lease Number N6247498RP00P99 (the "South Waterfront Master Lease") with the Navy for use of certain real property located at the Base; and,

WHEREAS, The South Waterfront Master Lease enables the Authority to sublease portions of the master leased area for interim uses and generate revenues to support the interim uses and the future redevelopment of the Base; and,

WHEREAS, To accommodate the increased level of interest in subleasing additional properties on Treasure Island for the purpose of storage, and to generate additional revenues

1 for the Authority, the Authority has asked the Navy and the Navy has agreed to incorporate
2 Buildings 7, 41, 289, 290, 530 and associated lots into the Leased Premises of the South
3 Waterfront Master Lease; now, therefore, be it

4 RESOLVED, That the Board of Directors hereby approves the Twenty First
5 Amendment to Lease Agreement N6247498RP00P99 (the "Twenty First Amendment") with
6 the Navy to include Buildings 7, 41, 289, 290, 530 and associated lots into the Leased
7 Premises and authorizes the Director of Island Operations or her designee to execute the
8 Twenty First Amendment in substantially the form attached hereto as Exhibit A; and be it

9 FURTHER RESOLVED, That the Board of Directors hereby authorizes the
10 Director of Island Operations to enter into any additions, amendments or other modifications
11 to the Twenty First Amendment that the Director of Island Operations determines in
12 consultation with the City Attorney are in the best interests of the Authority, that do not
13 materially increase the obligations or liabilities of the Authority, that do not materially reduce
14 the rights of the Authority, and are necessary or advisable to complete the preparation and
15 approval of the Twenty First Amendment, such determination to be conclusively evidenced by
16 the execution and delivery by the Director of Island Operations of the documents and any
17 amendments thereto.

1 CERTIFICATE OF SECRETARY

2 I hereby certify that I am the duly elected Secretary of the Treasure Island
3 Development Authority, a California nonprofit public benefit corporation, and that the
4 above Resolution was duly adopted and approved by the Board of Directors of the
5 Authority at a properly noticed meeting on June 11, 2008.
6

7
8 Owen Stephens, Secretary
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**TWENTY FIRST AMENDMENT
TO LEASE AGREEMENT N6247498RP00P99
BETWEEN
THE UNITED STATES OF AMERICA
AND
TREASURE ISLAND DEVELOPMENT AUTHORITY**

THIS LEASE AMENDMENT made this _____ day of _____ 2008, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 4 September 1998, entered into Lease Agreement N6247498RP00P99 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth; the following paragraphs to Lease N6247498RP00P99 are hereby amended to reflect the following changes;

1. Paragraph 7 ENVIRONMENTAL BASELINE SURVEY AND FINDINGS OF SUITABILITY TO LEASE:

INSERT to EXHIBIT D:

"Final Finding of Suitability to Lease Reuse Zone 2B, Parcels T011, T012, T013, T015, T016, T017, T018, T019, T020, T023, T024, T025, and a portion of T026, at Naval Station Treasure Island. August 22, 1997. As shown in Exhibit "D-1" attached hereto and made part hereof."

"Finding of Suitability to Lease Parcels T007, T008, T010, T014 and T116 at Naval Station Treasure Island, San Francisco, California. July 1996. As shown in Exhibit "D-2" attached hereto and made part hereof."

2. Paragraph 1 LEASED PREMISES add the following:

"Use of Buildings 7, 41, 289, 290, 530 and associated lots as shown in Exhibit A-11, attached hereto and made a part hereof."

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in all financial dealings.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the statistical analysis performed.

3. The third part of the document presents the results of the study. It includes a series of tables and graphs that illustrate the findings of the research.

4. The fourth part of the document discusses the implications of the findings and the potential applications of the research. It also includes a conclusion and a list of references.

5. The fifth part of the document provides a detailed description of the experimental setup and the equipment used. It includes a list of the materials and reagents used in the study.

6. The sixth part of the document discusses the limitations of the study and the need for further research. It also includes a list of the authors and their affiliations.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

TREASURE ISLAND DEVELOPMENT
AUTHORITY

Title _____

Title _____

APPROVED AS TO FORM:

CITY ATTORNEY

AGENDA ITEM 9H
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Approving and Authorizing the Execution of a Sublease with The San Francisco Fog Rugby Football Club, Inc., for approximately 269,150 square feet of unimproved land located at 5th Street between Avenues H and D

Contact: Richard A. Rovetti, Leasing Manager

Phone: 415-274-3365

BACKGROUND

The San Francisco Fog Rugby Football Club, Inc., a California non-profit corporation (hereafter referred to as "SF FOG"), provides training for San Francisco youth and residents in team sports. The mission of SF FOG is to expand the reach of traditional sports and to foster regional and local sports competitions.

The SF FOG has asked Project Staff for unimproved land on Treasure Island for the development, installation and maintenance of two athletic fields, and a community playground. Project Staff has identified approximately 269,150 square feet of unimproved land located at 5th Street between Avenues H and D. This site is directly adjacent to the Treasure Island baseball diamond and Job Corps athletic field. SF FOG will bring clean soil and materials to be placed on top of the land and held in place by a perimeter barrier. Excavation will be minimized to limit the possibility of encountering subsurface hazardous materials. All improvements and alterations will be subject to the Authority's prior written approval based on plans and specifications provided by SF FOG. The resulting athletic fields and playground will be suitable for training and play. The athletic fields and playground will be available for use by Treasure Island residents.

SUBLEASE TERMS AND CONDITIONS

SF FOG will sign the Authority's standard form Sublease document. The salient terms and conditions of the proposed Sublease include the following:

Premises: Approximately 269,150 square feet of unimproved land

Location: 5th Street between Avenues H and D

Commencement Date: July 1, 2008

Lease Expiration

Date: November 30, 2008

Lease Term:	month-to-month
Base Rent:	The Premises will be provided to the Subtenant at no Base Rent in consideration of the Subtenant's obligation to assume all responsibility for development, maintenance, and repairs to the Premises, and provide a public benefit to the community by reaching out to Treasure Island residents to introduce them to team sports by making facilities, training and athletic events available to the Treasure Island community at no cost.
Use:	Development, installation and maintenance of two athletic fields and a community playground
Security Deposit:	\$1,000.00

PROPOSED MONTHLY BASE RENT

Under the Authority's Interim Subleasing Policy, the Minimum Rental Rate Schedule sets ranges of minimum sublease rental rates per square foot by type of use and facility for office and industrial space. Authority Staff reviews and analyzes available commercial data including market comparables of properties similarly situated to the Authority properties and evaluates the Authority transactions over the past 12 months to establish fair market value. The Authority Board last approved the Minimum Rental Rate Schedule in July 2007, by Resolution No. 07-54-07/11.

The Subleasing Policy has established a Minimum Rental Rate of \$0.05 PSF for use of unpaved land as industrial yards. However, according to the Authority commissioned Carneghi-Blum Market Rent Appraisal conducted in February 2007, athletic fields have no rental value. The proximity of this location to the rugby field makes it more appropriate for use as an athletic field than as an industrial yard.

SF FOG has requested a Sublease that would allow them to improve this area as an athletic field. The cost associated with the development of this athletic field is still under review. However, San Francisco Golden Gate Rugby Club developed a 54,000 square foot field that they occupy at a cost of \$85,000 or about \$1.55 PSF. This indicates that the cost to develop this field for SF FOG will be approximately \$177,870. Annual maintenance costs will range from \$10,000 to \$15,000 per year based on the experience of San Francisco Golden Gate Rugby.

SF Golden Gate Rugby, SF Netball Association, San Francisco Little League, San Francisco Gaelic Athletic Association are provided field space on Treasure Island at no base rent, subject to the condition that the clubs develop their facilities, assume all responsibility for maintenance and repairs and contribute to the community by reaching out to Treasure Island residents to introduce them to the sport and by making facilities, training and athletic events available to the Treasure Island community for free. SF FOG offers to provide the same benefits to the Treasure Island community.

FINANCIAL IMPACT

Neither revenue, nor capital expenditures were budgeted for the fields for FY 08-09. This transaction will have no impact on the FY 08-09 budget.

RECOMMENDATION

The Authority Staff recommends that the Authority Board of Directors approve the proposed Sublease with The San Francisco Fog Rugby Football Club, Inc., a California non-profit corporation, and authorize the Director of Island Operations or her designee to execute said Sublease for the rental of unimproved land located at 5th Street between Avenues H and D on Treasure Island for a month-to-month term and subject to the additional terms and conditions set forth above.

EXHIBIT A – Sublease between the Treasure Island Development Authority and The San Francisco Fog Rugby Football Club

Prepared by: Richard A. Rovetti, Leasing Manager
For: Mirian Saez, Director of Island Operations

[Sublease with The San Francisco Fog Rugby Football Club, Inc.]

Resolution Approving and Authorizing the Execution of a Sublease with The San Francisco Fog Rugby Football Club, Inc. for approximately 269,150 square feet of unimproved land located at 5th Street between Avenues H and D.

WHEREAS, Former Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America, acting by and through the Department of the Navy (the "Navy"); and,

WHEREAS, The Base was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, The San Francisco Fog Rugby Football Club, Inc., a California non-profit corporation (hereafter referred to as "SF FOG"), is requesting a month-to-month Sublease for approximately 269,150 square feet of unimproved land located at 5th Street between Avenues H and D commencing on July 1, 2008; and,

WHEREAS, The mission of the SF FOG is to expand the reach of traditional sports and to foster regional and local sports competitions, and to train San Francisco youth and residents in the sport under the umbrella of SF FOG; and,

WHEREAS, The SF FOG will assume all responsibility for development, maintenance, and repairs to the facilities and provide a public benefit to the community by reaching out to Treasure Island residents to introduce them to the sport by making facilities, training and athletic events available to the Treasure Island community at no cost; and,

WHEREAS, Although the Authority will receive no monthly base rent for this Sublease, Authority staff believes the public and community benefits and capital improvements that SF FOG will make to this area represent fair market value for this Sublease at this time; now, therefore, be it

RESOLVED, That the Board of Directors hereby approves the Sublease to SF FOG of approximately 269,150 square feet of unimproved land located at 5th Street between Avenues H and D and authorizes the Director of Island Operations or her designee to execute said Sublease in substantially the form attached hereto as Exhibit A; and be it

FURTHER RESOLVED, That the Board of Directors hereby finds that (i) entering into the Sublease will serve the goals of the Authority and the public interests of the City, and (ii) the terms and conditions of the Sublease are economically reasonable; and be it

FURTHER RESOLVED, That SF FOG will assume all responsibility for maintenance and repairs to the field that they develop and that SF FOG will conduct outreach to the Treasure Island community to expand the reach of traditional sports by making facilities, training and athletic events available to the Treasure Island community for free; and Be It

FURTHER RESOLVED, That in accord with the appraised fair market rent for athletic fields on Treasure Island, the field will be provided to the SF FOG at no cost for the term of the Sublease in consideration of SF FOG's obligations to improve and maintain the athletic field and to provide outreach to the Treasure Island community; and Be It

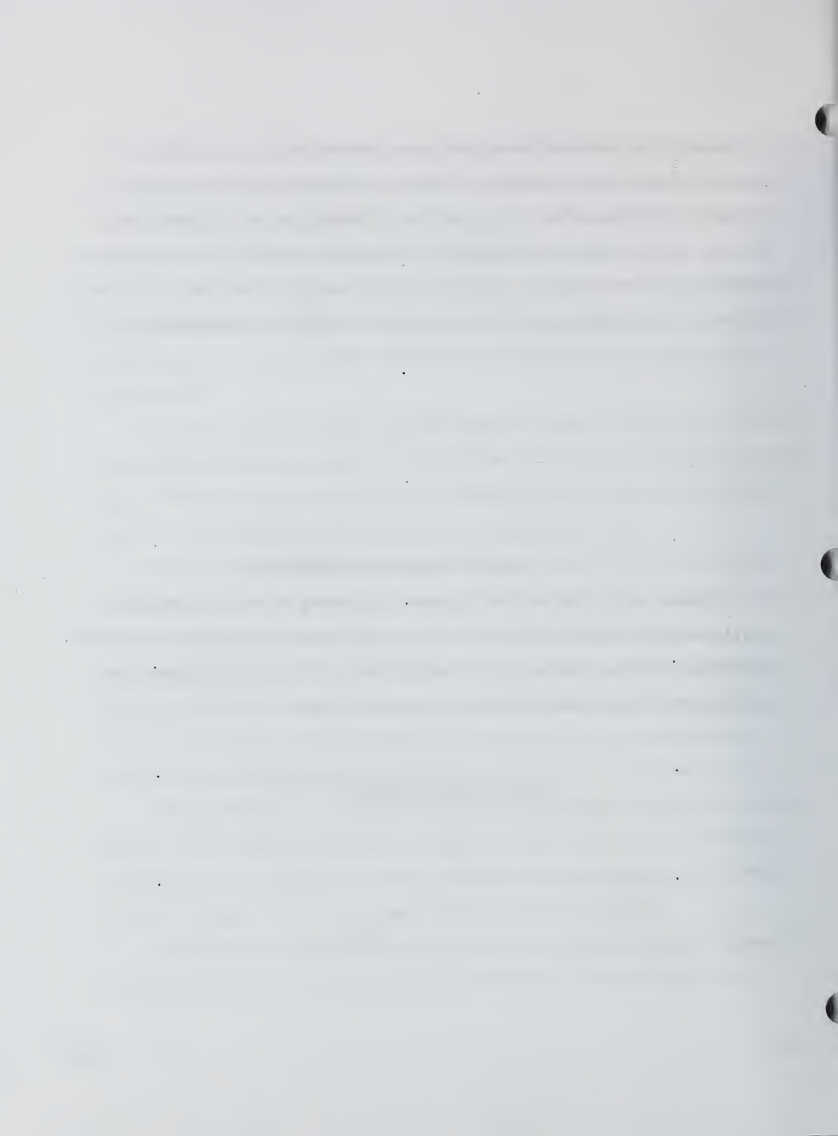
FURTHER RESOLVED, That the Board of Directors hereby authorizes the Director of Island Operations to enter into any additions, amendments or other modifications to the

Sublease that the Director of Island Operations determines in consultation with the City Attorney are in the best interests of the Authority, that do not materially increase the obligations or liabilities of the Authority, that do not materially reduce the rights of the Authority, and are necessary or advisable to complete the preparation and approval of the Sublease, such determination to be conclusively evidenced by the execution and delivery by the Director of Island Operations of the documents and any amendments thereto.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on June 11, 2008.

Owen Stephens, Secretary



ITEM 9(H) – Exhibit A

SUBLEASE No. 50

between

TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

THE SAN FRANCISCO FOG RUGBY FOOTBALL CLUB, INC.
a California nonprofit corporation

as Subtenant

For the Sublease of

Unimproved Land Located at 5th Street between Avenues H and D

Treasure Island Naval Station
San Francisco, California

July 1, 2008

TREASURE ISLAND SUBLEASE

Table of Contents

<u>Section</u>	<u>Page</u>
1. BASIC SUBLEASE INFORMATION.....	1
2. PREMISES.....	3
3. COMPLIANCE WITH MASTER LEASE.....	6
4. TERM.....	7
5. RENT.....	8
6. TAXES, ASSESSMENTS AND OTHER EXPENSES.....	9
7. USE; COVENANTS TO PROTECT PREMISES.....	9
8. ALTERATIONS.....	11
9. REPAIRS AND MAINTENANCE.....	12
10. LIENS.....	13
11. COMPLIANCE WITH LAWS.....	13
12. ENCUMBRANCES.....	14
13. DAMAGE OR DESTRUCTION.....	15
14. ASSIGNMENT AND SUBLETTING.....	15
15. DEFAULT; REMEDIES.....	16
16. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION.....	17
17. INSURANCE.....	20
18. ACCESS BY SUBLANDLORD.....	22
19. SURRENDER.....	23
20. HAZARDOUS MATERIALS.....	24
21. GENERAL PROVISIONS.....	26
22. SPECIAL PROVISIONS.....	30

LIST OF EXHIBITS:

EXHIBIT A – Master Lease
EXHIBIT B – Diagram of Premises
EXHIBIT C – Cover Page of Seismic Report
EXHIBIT D – Rules and Regulations
EXHIBIT E – Utilities
EXHIBIT F – TIHDI Work Force Hiring Plan

TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated for reference purposes only as of July 1, 2008, is by and between the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit corporation ("Sublandlord"), and THE SAN FRANCISCO FOG RUGBY FOOTBALL CLUB, INC., a California nonprofit corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated September 4, 1998, as amended from time to time (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord certain real property located on Treasure Island Naval Station (the "Property"), as more particularly described in the Master Lease.

B. Subtenant desires to sublet from Sublandlord, and Sublandlord is willing to sublet to Subtenant, a portion of the Property on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. BASIC SUBLEASE INFORMATION

The following is a summary of basic sublease information (the "Basic Sublease Information"). Each item below shall be deemed to incorporate all of the terms of this Sublease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Sublease, the more specific provision shall control.

Sublease Reference Date:	July 1, 2008
Sublandlord:	TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit corporation
Subtenant:	THE SAN FRANCISCO FOG RUGBY FOOTBALL CLUB, INC., a California nonprofit corporation

Subleased Premises (Section 2.1):	Approximately 269,150 square feet of land located at 5 th Street between Avenues H and D, Treasure Island, San Francisco, CA. as more particularly shown on <u>Exhibit B</u> , attached hereto.
Facility:	Unimproved land located at 5 th Street between Avenues H and D
Term: (Section 4.1):	Commencement date: July 1, 2008 Expiration date: November 30, 2008
	Notwithstanding anything in this Sublease to the contrary, either Sublandlord or Subtenant, in its sole discretion, may terminate this Sublease for any reason upon delivery of not less than thirty (30) days' prior written notice to the other party.
Base Rent (Section 5.1):	The Premises will be provided to the Subtenant at no Base Rent in consideration of the Subtenant's obligation to assume all responsibility for development, maintenance, and repairs to the Premises, and provide a public benefit to the community by reaching out to Treasure Island residents to introduce them to rugby and soccer by making facilities, training and athletic events available to the Treasure Island community at no cost.
Rent Adjustment Date(s) (Section 5.2):	Not Applicable
Rent Increase Percentage (Section 5.2):	Not Applicable
Use (Section 7.1):	Subject to Section 8.1 below, development and use of the Premises as athletic fields, training facility, clubhouse, and community park.
Repair Amount (Section 13.1):	Ten Thousand Dollars (\$10,000)
Security Deposit (Section 19.3):	One Thousand Dollars (\$1,000.00)

Notice Address of Sublandlord (Section 21.1): Treasure Island Development Authority
Treasure Island Project Office
410 Avenue of Palms
Building 1, 2nd Floor
Treasure Island
San Francisco, CA 94130
Attn: Mirian Saez
Director of Island Operations
Fax No.: 415-274-0299

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Eileen M. Malley
Fax No.: (415) 554-4755

Notice Address of Subtenant (Section 21.1): The San Francisco Fog Rugby Football Club
2370 Market Street, Suite 232
San Francisco, CA 94114

Attn: Warrington Parker
Ken Bousfield
Phone No. (408) 857-6449

Notice Address of Master Landlord (Section 21.1): Department of The Navy
Base Realignment and Closure
Program Management Office West
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310
Fax #: (619) 532-9858

2. PREMISES

2.1. Subleased Premises. Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises. Subtenant shall have the non-exclusive right to use, together with other subtenants in the Facility, the lobbies, corridors, elevators, stairways and other public areas of the Facility and the Property (collectively, the "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Facility

and the Property.

In the event Subtenant uses or occupies space outside the Premises without the prior written consent of Sublandlord (the "Encroachment Area"), then upon written notice from Sublandlord ("Notice to Vacate"), Subtenant shall immediately vacate such Encroachment Area and pay as additional rent for each day Subtenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by Sublandlord's Board of Directors for the Premises or the Facility, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Sublandlord (the "Encroachment Area Charge"). If Subtenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Sublandlord of the Encroachment Area Charge be deemed a consent by Sublandlord to the use or occupancy of the Encroachment Area by Subtenant or a waiver (or be deemed as waiver) by Sublandlord of any and all other rights and remedies of Sublandlord under this Sublease (including Subtenant's obligation to indemnify, defend and hold Sublandlord harmless as set forth in the last paragraph of this Section 2.1), at law or in equity.

In addition to the foregoing amount, Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Sublandlord determines during subsequent inspection(s) that Subtenant has failed to vacate the Encroachment Area, then Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Sublandlord to Subtenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Sublandlord will incur by reason of Sublandlord's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Subtenant's failure to comply with the applicable Notice to Vacate and Sublandlord's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Sublandlord under this Sublease, at law or in equity. The amounts set forth in this Section 2.1 shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area.

In addition to the rights and remedies of Sublandlord as set forth in the immediately foregoing two paragraphs of this Section 2.1, the terms and conditions of the indemnity and exculpation provision set forth in Section 16 below shall also apply to Subtenant's use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Subtenant shall additionally indemnify, defend and hold Sublandlord harmless from and against any and all loss or liability resulting from delay by Subtenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any claims

against Sublandlord made by any tenant or prospective tenant founded on or resulting from such delay and losses to Sublandlord due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 2.1 and the reasonableness of the amount of the charges described in this Section 2.1.

Initials: _____ Sublandlord _____ Subtenant

2.2. As Is Condition of Premises.

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Subtenant's Agents"), of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 2.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises ("Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below), (iii) the quality, nature or adequacy of any utilities serving

the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use by Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 2.2(b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that any structures or improvements located on or about the Premises, may fail structurally and collapse.

3. COMPLIANCE WITH MASTER LEASE

3.1. **Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

3.2. **Performance of Master Landlord's Obligations.** Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

3.3. **Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

3.4. **Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of

any rights of termination reserved by or vested in the Master Landlord.

4. TERM

4.1. **Term of Sublease.** The term of this Sublease (the "Term") shall commence on the Commencement Date set forth in the Basic Sublease Information, and expire on the Expiration Date set forth in the Basic Sublease Information, unless sooner terminated pursuant to the terms of this Sublease.

4.2. **Effective Date.** This Sublease shall become effective on the date (the "Effective Date") upon the later of (i) the Parties' execution and delivery of this Sublease, (ii) Sublandlord's Board of Director's approval of this Sublease at a duly noticed meeting, if such approval is required, or (iii) the Commencement Date.

4.3. **Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

4.4. **Termination by Sublandlord.** Subtenant's period of occupancy of the Premises is subject to Sublandlord's right to terminate this Sublease as provided herein at such time as Sublandlord determines, in its sole discretion, that the Premises are needed in connection with a Sublandlord program or project. As used herein, "Sublandlord program or project" shall mean any development or renovation, by public and/or private parties, of the building or land in or on which the Premises are located. In the event of any such development or renovation, Sublandlord shall have the right to terminate this Sublease without liability or expense upon delivery to Subtenant of thirty (30) days prior written notice of such termination. Subtenant agrees and shall be required to surrender possession of the Premises by the end of such thirty (30) day period.

4.5. **No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person as that term is defined under the California Government Code Section 7260 et seq. ("California Relocation Act") and the Uniform Relocation Assistance and Real Property Policies Act, 42 U.S.C. 4601 et seq. ("URA"), and that Subtenant will not be entitled to any relocation benefits provided under the California Relocation Act and the URA, including any moving expenses, reimbursement for costs associated with increased rent, loss of goodwill or other costs related to the termination of Subtenant's Lease and Subtenant's relocation from the Premises. Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers,

directors and employees, agents, contractors and successors and assigns and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260, et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4601, et seq.).

Initials: _____ Subtenant

5. RENT

5.1. Base Rent. Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Base Rent in the amount set forth in the Basic Sublease Information. Base Rent shall be paid to Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 21.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

5.2. Adjustments in Base Rent. If this Sublease has not been terminated, then on each Rent Adjustment Date set forth in the Basic Sublease Information, the Base Rent shall be increased by the Rent Increase Percentage set forth in the Basic Lease Information.

5.3. Additional Charges. In addition to Base Rent, Subtenant shall pay all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder, all utility charges, and any amounts other than Base Rent that shall become due and payable by Subtenant under this Sublease (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

5.4. Late Charge. If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

5.5. Default Interest. If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

6.2. Evidence of Payment. Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES

7.1. Subtenant's Permitted Use. Subtenant may use the Premises for the Permitted Use set

forth in the Basic Sublease Information, but for no other purpose without the prior written consent of Sublandlord, which consent may be given or withheld in Sublandlord's sole and absolute discretion.

7.2. Subtenant's Access to the Premises. As provided in Section 30 of the Master Lease, Subtenant shall have access to the Premises on a 24-hours per day, seven days a week basis; provided, however, Subtenant shall coordinate such access with the local representative of Master Landlord.

7.3. Rules and Regulations. Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

7.4. Easements. This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"); provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

7.5. No Interference with Navy Operations. Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over Subtenant's use of the Premises in the event of any conflict; provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

7.6. No Unlawful Uses, Nuisances or Waste. Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste

on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas on or about the Property outside of the Premises.

8. ALTERATIONS

8.1. Alterations. Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications for any Alterations approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of construction on the Premises at all times.

8.2. Historic Properties. Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to any improvements on the Premises (i) which will affect the historic characteristics of the improvements or modify the appearance of the exterior of the improvements without Master Landlord's and Sublandlord's prior written consent, or (ii) if such Alterations would preclude qualifying the improvements for inclusion on the National Register for Historic Places.

8.3. Ownership of Alterations. Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 8 shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 19 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 8.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

8.4. Subtenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment used upon or installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and shall be removed by Subtenant, subject to the provisions of Section 19 hereof.

Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

8.5. Sublandlord's Alterations. Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the improvements on the Premises; provided, that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the purposes stated herein.

9. REPAIRS AND MAINTENANCE

9.1. Subtenant Responsible for Maintenance and Repair. Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

9.2. Utilities. Sublandlord shall provide the basic utilities and services described in the attached Exhibit E (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole cost, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

9.3. Landscaping. Subtenant shall maintain the exterior landscaping of the Premises in good condition and repair.

9.4. Janitorial Services. Subtenant shall provide all janitorial services for the Premises.

9.5. Pest Control. Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

9.6. Trash. Subtenant shall deposit all trash into designated containers in the Premises in

compliance with the Rules and Regulations attached hereto as Exhibit F. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

9.7. No Right to Repair and Deduct. Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

10. LIENS

10.1. Liens. Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

11. COMPLIANCE WITH LAWS

11.1. Compliance with Laws. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary; provided, however Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future

Environmental Laws (as defined in this Sublease below), and all applicable provisions of the San Francisco Environment Code. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2. Regulatory Approvals.

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation, any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") Sublandlord, City and Master Landlord, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties"), against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

11.3. Compliance with Sublandlord's Risk Management Requirements. Subtenant shall not do anything, or permit anything to be done, in or about the Premises or to any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

12. ENCUMBRANCES

12.1. Encumbrance By Subtenant. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

13. DAMAGE OR DESTRUCTION

13.1. Damage or Destruction to the Premises. In the case of damage to or destruction of the Premises by earthquake, fire, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in Section 17 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more to repair than the Repair amount set forth in the Basic Lease Information, either party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 19 (except for damage caused by a casualty pursuant to which this Sublease may be terminated under this Section 13.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 13.1, then Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 8.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

13.2. No Abatement in Rent. In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 13.1 above, there shall be no abatement in the Rent payable hereunder.

13.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

14. ASSIGNMENT AND SUBLETTING

14.1. Restriction on Assignment and Subletting. Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, sublease or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone

other than itself, or sublet any portion of the Premises (a "Transfer"), without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion. Subtenant shall provide Sublandlord with a written notice of its intention to Transfer this Sublease or the Premises, together with a copy of the proposed Transfer agreement at least thirty (30) days prior to the commencement date of the proposed Transfer. Subtenant shall provide Sublandlord with such information regarding the proposed Transfer as Sublandlord may reasonably request.

14.2. Bonus Rental. If Sublandlord consents to a Transfer of any of Subtenant's interest in or rights with respect to the Premises pursuant to Section 14.1 above, then one hundred percent (100%) of any rent or other consideration payable to Subtenant in excess of the Base Rent payable hereunder (or the proportionate share thereof applicable to the portion of the Premises that is subject to the Transfer) shall be paid to Sublandlord immediately upon receipt by Subtenant.

15. DEFAULT; REMEDIES

15.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

- (a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;
- (b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease; provided, Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord;
- (c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days;
- (d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted; and
- (e) **Notices of Default.** The delivery to Subtenant of three (3) or more notices of default within any twelve (12) month period, irrespective of whether Subtenant actually cures such

default within the specified time period, may, in the sole and absolute discretion of the Authority, be deemed an incurable breach of this Sublease allowing the Authority to immediately terminate this Sublease without further notice or demand to Subtenant.

15.2. Remedies. Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

15.3. Sublandlord's Right to Cure Subtenant's Defaults. If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

16. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

16.1. Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not

limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused solely by the gross negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state

relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties' decision to Sublease the Premises to Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 16.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

16.2. Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Subtenant's use of the Premises, including but not limited to, any Losses arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the

custody of Subtenant or Subtenant's Agents or Subtenant's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises; and (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, in, on, or about the Premises or any Alterations, except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

17. INSURANCE

17.1. Required Insurance Coverage. Subtenant, at its sole cost and expense, shall maintain, or cause to be maintained, through the Term of this Sublease, the following insurance:

(a) General Liability Insurance. Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than One Million Dollars (\$1,000,000), explosion, collapse and underground (XCU).

(b) Automobile Liability Insurance. Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Subtenant's activity on the Premises or the Permitted Use.

(c) Worker's Compensation and Employer's Liability Insurance. If Subtenant has employees, Worker's Compensation Insurance in statutory amounts with Employer's Liability

with limits not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) **Personal Property Insurance.** Subtenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Subtenant for the replacement of Subtenant's personal property.

(e) **Other Coverage.** Such other insurance or different coverage amounts as is required by law or as is generally required by commercial owners of property similar in size, character, age and location as the Premises, as may change from time to time, or as may be required by the City's Risk Manager.

17.2. Claims-Made Policies. If any of the insurance required in Section 17.1 above is provided under a claims-made form of policy, Subtenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Sublease, to the effect that should occurrences during the Term give rise to claims made after termination of this Sublease, such claims shall be covered by such claims-made policies.

17.3. Annual Aggregate Limits. If any of the insurance required in Section 17.1 above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

17.4. Payment of Premiums. Subtenant shall pay the premiums for maintaining all required insurance.

17.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Sublandlord and Subtenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Sublease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

17.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Subtenant hereunder shall

contain a cross-liability clause, shall name as additional insureds the "THE TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the additional insureds with respect to claims arising under this Sublease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Subtenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Sublandlord with an AM Best rating of not less than A-VIII and authorized to do business in the State of California.

(c) All insurance policies required to be maintained by Subtenant hereunder shall provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Subtenant and Sublandlord. Such notice shall be given in accordance with the notice provisions of Section 21.1 below.

(d) Subtenant shall deliver to Sublandlord certificates of insurance and additional insured policy endorsements in a form satisfactory to Sublandlord evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Subtenant shall, upon Sublandlord's request, promptly furnish Sublandlord with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days' prior written notice, Sublandlord may require Subtenant to increase the insurance limits set forth in Section 17.1 above if Sublandlord finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Subtenant with respect to risks comparable to those associated with the use of the Premises.

(f) Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

(g) Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

18. ACCESS BY SUBLANDLORD

18.1. Access to Premises by Sublandlord.

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

18.2. Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

19. SURRENDER

19.1. Surrender of the Premises. Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 8.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal

Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

19.2. No Holding Over. If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises. Subtenant shall have no right to hold over without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and absolute discretion. If Sublandlord holds over the Premises or any part thereof after expiration or earlier termination of this Sublease, such holding over shall be terminable upon written notice by Sublandlord, and the Base Rent shall be increased to two hundred percent (200%) of the Base Rent in effect immediately prior to such holding over, and such holdover shall otherwise be on all the other terms and conditions of this Sublease. This Section shall not be construed as Sublandlord's permission for Subtenant to hold over. Acceptance of any holdover Base Rent by Sublandlord following expiration or termination of this Sublease shall not constitute an extension or renewal of this Sublease.

19.3. Security Deposit. Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount set forth in the Basic Sublease Information as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Subtenant within forty-five (45) days of the termination of this Sublease.

20. HAZARDOUS MATERIALS

20.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any

federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Subtenant agrees that it shall comply, without limiting the foregoing, with the provisions of Article 21 of the San Francisco Health Code including, without limitation, regarding obtaining and complying with the requirements of an approved hazardous materials management plan, and with the requirements of the environmental protection provisions provided for in Section 13 of the Master Lease.

20.2. Subtenant's Environmental Indemnity. If Subtenant breaches any of its obligations contained in Section 20.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 16.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including,

without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

20.3. Acknowledgment of Receipt of EBS and FOSL Reports. Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Subtenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises as described in the EBS and the FOSL. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 et seq., requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Sublease, Subtenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 et seq., 25359.7 and related statutes.

21. GENERAL PROVISIONS

21.1. Notices. Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to the appropriate addresses set forth in the Basic Sublease Information. Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any

notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 21.1 and applicable Laws, shall be deemed receipt of such notice.

21.2. No Implied Waiver. No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment of Rent due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

21.3. Amendments. Neither this Sublease nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

21.4. Authority. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosures set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

21.5. Joint and Several Obligations. The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

21.6. Interpretation of Sublease. The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and

such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

21.7. Successors and Assigns. Subject to the provisions of Section 14, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

21.8. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

21.9. Severability. If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

21.10. Governing Law. This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

21.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

21.12. Attorneys' Fees. In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Sublease, reasonable fees of attorneys in the Office of the San Francisco City Attorney (Sublandlord's General Counsel) shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Further, for purposes of this Sublease, the term "attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. The term "attorney" shall have the same meaning as the term "counsel".

21.13. Time of Essence. Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

21.14. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

21.15. Survival of Indemnities. Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any

claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

21.16. Relationship of Parties. Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

21.17. Recording. Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

21.18. Non-Liability of Indemnified Parties' Officials, Employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Sublease.

21.19. No Discrimination. Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

21.20. Counterparts. This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21.21. Master Landlord's Consent. This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord.

22. SPECIAL PROVISIONS

22.1. Signs. Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

22.2. Public Transit Information. Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant

employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

22.3. TIHDI Job Broker. Subtenant shall comply with the requirements of the TIHDI Work Force Hiring Plan attached hereto as Exhibit F.

22.4. Local Hiring. Subtenant further agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Subtenant's personnel needs and to contract with local businesses for Subtenant's purchase of supplies, materials, equipment or services.

22.5. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Sub-Subleases and Other Subcontracts.** Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Sublease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **HRC Form.** As a condition to this Sublease, Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, (i) Subtenant executed and submitted to the HRC Form HRC-128-101 with supporting documentation; and (ii) the HRC approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

22.6. MacBride Principles - Northern Ireland. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

22.7. Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Section 802(b) and 803(b) of the San Francisco Environment Code, Subtenant shall not provide any items to the construction of tenant improvements or Alterations in the Premises, or otherwise in the performance of this Sublease, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

22.8. Conflicts of Interest. Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete

disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

22.9. Wages and Working Conditions. Subtenant agrees that any person performing labor in the construction of any tenant improvements and any Alterations to the Premises, which Subtenant provides under this Sublease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Subtenant shall include, in any contract for construction of such tenant improvements and Alterations, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord upon request, certified payroll reports with respect to all persons performing labor in the construction of such tenant improvement work or any Alterations to the Premises.

22.10. Prohibition of Tobacco Advertising. Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Sublandlord or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

22.11. Pesticide Prohibition. Subtenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Subtenant to submit to Sublandlord an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant may need to apply to the Premises during the terms of this Sublease, (b) describes the steps Subtenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Subtenant's primary IPM contact person with the City. In addition, Subtenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

22.12. First Source Hiring Ordinance. The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged

individuals for entry level positions. Within thirty (30) days after Sublandlord adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Subtenant shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

22.13. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City departments and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

22.14. Conflicts of Interest. Through its execution of this Sublease, Subtenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Subtenant becomes aware of any such fact during the Term of this Sublease, Subtenant shall immediately notify Sublandlord.

22.15. Charter Provision. This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

22.16. Requiring Health Benefits for Covered Employees. Unless exempt, Subtenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Sublease as though fully set forth. The text of the HCAO is available on the web at www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml. Capitalized terms used in this Section and not defined in this Sublease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Subtenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Subtenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

(c) Subtenant's failure to comply with the HCAO shall constitute a material breach of this Sublease. Sublandlord shall notify Subtenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Sublease for violating the HCAO, Subtenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Subtenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Sublandlord shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to Sublandlord.

(d) Any Subcontract entered into by Subtenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Subtenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Sublandlord may pursue the remedies set forth in this Section against Subtenant based on the Subcontractor's failure to comply, provided that Sublandlord has first provided Subtenant with notice and an opportunity to obtain a cure of the violation.

(e) Subtenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Sublandlord with regard to Subtenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Subtenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Subtenant shall keep itself informed of the current requirements of the HCAO.

(h) Subtenant shall provide reports to Sublandlord in accordance with any reporting standards promulgated by Sublandlord under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Subtenant shall provide Sublandlord with access to records pertaining to compliance with the HCAO after receiving a written request from Sublandlord to do so and being provided at least five (5) business days to respond.

(j) Sublandlord may conduct random audits of Subtenant to ascertain its compliance with HCAO. Subtenant agrees to cooperate with Sublandlord when it conducts such audits.

(k) If Subtenant is exempt from the HCAO when this Sublease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) (or [Fifty Thousand Dollars (\$50,000) if Subtenant is a qualified nonprofit], but Subtenant later enters into an agreement or agreements that cause Subtenant's aggregate amount of all agreements with Sublandlord to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

22.17. Notification of Limitations on Contributions. Through its execution of this Sublease, Subtenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

22.18. Preservation-Treated Wood Containing Arsenic. As of July 1, 2003, Subtenant may not purchase preservative-treated wood products containing arsenic in the performance of this Sublease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Subtenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

22.19. Resource Efficient City Buildings and Pilot Projects. Subtenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Subtenant

hereby agrees that it shall comply with all applicable provisions of such code sections.

22.20. Food Service Waste Reduction. Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully set forth. This provision is a material term of this Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Sublandlord will suffer actual damages that will be impractical or extremely difficult to determine; further, Subtenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Sublandlord will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Sublandlord because of Subtenant's failure to comply with this provision.

22.21. Estoppel Certificates. At any time and from time to time, within ten (10) days after Sublandlord's request, Subtenant will execute, acknowledge and deliver to Sublandlord a statement certifying the following matters: (a) the Commencement Date and Expiration Date of this Sublease; (b) that this Sublease is unmodified and in full force and effect (or if there have been modifications, that this Sublease is in full force and effect as modified and the date and nature of such modifications); (c) the dates to which the Rent has been paid; (d) that there are no Events of Default under this Sublease (or if there are any Events of Default, the nature of such Event of Default); and (e) any other matters reasonably requested by Sublandlord. Sublandlord and Subtenant intend that any such statement delivered pursuant to this paragraph may be relied upon by any assignee of Sublandlord's interest in the Master Lease or this Sublease, any mortgagee or any purchaser or prospective purchaser of the building or land on which the Premises are located. Subtenant irrevocably appoints Sublandlord, as Subtenant's agent, to execute and deliver in the name of Sublandlord any such instrument if Subtenant fails to do so, which failure shall also be an Event of Default under this Sublease.

22.22. Addendum. The terms of the Addendum attached to this Sublease are incorporated into the Sublease by reference. In the event of any inconsistency between the Sublease and the Addendum, the terms of the Addendum shall control.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

SUBTENANT:
SAN FRANCISCO FOG RUGBY
FOOTBALL CLUB,
a California nonprofit corporation

By: _____

Its: _____

SUBLANDLORD:
Treasure Island Development Authority

By: _____

Mirian Saez
Director of Island Operations

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

MASTER LEASE

EXHIBIT B

DIAGRAM OF PREMISES

EXHIBIT C

COVER PAGE OF THE SEISMIC REPORT

EXHIBIT D

RULES AND REGULATIONS

1. All rules and regulations set out in the Master Lease shall prevail.
2. No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the Building or elsewhere on the Property, without prior written approval of Sublandlord.
3. Subtenant's contractors and invitees, while on the Premises or Subtenant's parking area, shall be subject to these Rules and Regulations, and will be subject to direction from Sublandlord and its agents, but will not be an agent or contractor of the Sublandlord or its agents. Subtenant's contractors shall be licensed by the State, insured and bonded at the amount requested by the Sublandlord.
4. Subtenant shall install and maintain at Subtenant's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises.

EXHIBIT E

STANDARD UTILITIES AND SERVICES AND RATES

Utilities Rate Schedule

Utility Service	Rate	Unit
Electric Rate	\$ 0.14	per kwh
Water Rate	\$ 5.40	per kgal
Sewer Rate	\$ 5.75	per kgal
Gas Rate	\$ 0.60	per therm

Rates are subject to adjustment.

Subtenant shall install utility Submeters to the satisfaction of Sublandlord.

Subtenant shall arrange for delivery of utility services to the premises by making a "Request for Utilities Services" by contacting:

San Francisco Public Utilities Commission
c/o Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Mr. Vic Zorzinsky
(415) 274-0333

EXHIBIT F

TIHDI WORKFORCE HIRING AGREEMENT

AGENDA ITEM 9(I)
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Approving and Authorizing the Execution of a Sublease with FCA Artists, Inc. for Building 140, Nimitz Conference Center (Action Item)

Contact: Richard A. Rovetti, Leasing Manager

Phone: 415-274-3365

BACKGROUND

FCA Artists, Inc., a California corporation (hereafter referred to as "FCA"), has been in the entertainment, music and artist management business for the past 15 years. FCA is requesting to enter into a month-to-month Sublease with the Treasure Island Development Authority (hereafter referred to as the "Authority") for approximately 24,169 square feet of space located at Building 140, the Nimitz Conference Center, and nonexclusive use of the parking lot adjacent to the Building 140 effective June 12, 2008.

SUBLEASE TERMS AND CONDITIONS

The salient terms and conditions of the proposed Sublease include the following:

Premises: Approximately 24,169 square feet of space located at Building 140, the Nimitz Conference Center, and nonexclusive use of the parking lot adjacent to Building 140, the Nimitz Conference Center.

Location: Building 140, Treasure Island

Commencement Date: June 12, 2008

Lease Expiration Date: November 30, 2008

Lease Term: Month-to-Month

Base Rent: Early Entry:
Commencing June 12, 2008 and ending August 31, 2008, the Subtenant shall be provided eighty-one (81) days of Early Entry for the sole purpose of installing equipment, painting and cleaning the facility. During the Early Entry period, Subtenant shall not pay Base Rent but shall be subject to all other terms and conditions set forth in the Sublease.

Commencing September 1, 2008, Monthly Base Rent shall be Six Thousand Forty Two Dollars and Twenty Five Cents (\$6,042.25) per month (\$.25 per square foot)

Use: General administrative office, storage, recording studio, and events and conference center which shall provide entertainment, food and beverage service as outlined in Exhibit D-1 of the Sublease and Section 4 of the Event Venues Master Lease.

Subtenant shall be prohibited from using the Premises for adult entertainment uses as defined in Section 890.36 of the San Francisco Planning Code.

Subtenant shall be required to obtain a Place of Entertainment Permit pursuant to Section 1060 of the San Francisco Police Code.

Security Deposit: \$12,084.50

PROPOSED MONTHLY BASE RENT

Under the Authority's Interim Subleasing Policy, the Minimum Rental Rate Schedule sets ranges of minimum sublease rental rates per square foot by type of use and facility for office and industrial space. Authority Staff reviews and analyzes available commercial data including market comparables of properties similarly situated to the Authority properties and evaluates the Authority transactions over the past 12 months to establish fair market value. The Authority Board last approved the Minimum Rental Rate Schedule in July 2007, by Resolution No. 07-54-07/11. Per the Schedule, the minimum monthly rental rate for space at Building 140 is \$.25 PSF. Authority Staff and FCA have negotiated a Sublease with a monthly rental rate of \$.25 per square foot.

Under the Authority's Interim Sublease Policy, Early Entry is set at 30 days for the purpose of preparing for occupancy. FCA is requesting 81 days of early entry commencing June 12, 2008 and ending August 31, 2008, to address installation of new floor and wall coverings, equipment, and cleaning of the facility. During this early entry period, FCA will not pay Base Rent but shall be subject to all other terms and conditions set forth in the Sublease. Commencing September 1, 2008, FCA will pay the monthly Base Rent as outlined above.

BUDGET IMPACT

The new Sublease will provide an increase of approximately \$72,507.00 per year to the Authority's budget.

RECOMMENDATION

The Authority Staff recommends that the Authority Board of Directors approve the proposed Sublease with FCA Artists, Inc., a California corporation, and authorize the Director of Island Operations or her designee to execute said Sublease for approximately 24,169 square feet of space located at Building 140, the Nimitz Conference Center, and nonexclusive use of the

parking lot adjacent to Building 140, Treasure Island, for a month-to-month term and subject to the additional terms and conditions set forth above.

EXHIBIT

EXHIBIT A – Sublease between the Treasure Island Development Authority and
FCA Artists, Inc.

Prepared by: Richard A. Rovetti, Leasing Manager
For: Mirian Saez, Director of Island Operations

1 [Sublease with FCA Artists, Inc.]

2 **Resolution Approving and Authorizing the Execution of a Sublease with FCA Artists,**
3 **Inc. for Building 140, the Nimitz Conference Center.**

4 WHEREAS, Former Naval Station Treasure Island is a military base located on
5 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by
6 the United States of America, acting by and through the Department of the Navy; and,

7 WHEREAS, The Base was selected for closure and disposition by the Base
8 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
9 subsequent amendments; and,

10 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
11 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
12 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
13 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
14 conversion of the Base for the public interest, convenience, welfare and common benefit of
15 the inhabitants of the City and County of San Francisco (the "City"); and,

16 WHEREAS, For over 15 years, FCA Artists, Inc., a California corporation (hereafter
17 referred to as "FCA"), has been in the entertainment, music and artist management business;
18 and,

19 WHEREAS, Under the proposed Sublease, FCA is requesting a month-to-month
20 Sublease for use of Building 140, Nimitz Conference Center located on Treasure Island, with
21 a monthly base rent of \$6,042.25 or \$.25 per square foot that is consistent with the Authority's
22 Approved Minimum Rent Schedule for 2007 and 2008; and,

23 WHEREAS, FCA is requesting 81 days of Early Entry commencing June 12, 2008 and
24 ending August 31, 2008, to address tenant improvements consisting of installation of new
25 floor and wall coverings, equipment, and cleaning of the facility; and,

1 WHEREAS, Although the Authority allows a maximum of 30 days Early Entry, given the
2 amount of improvements needed, Authority Staff believes 81 days is appropriate and
3 represents fair market value for Building 140 at this time; now, therefore, be it

4 RESOLVED, That the Board of Directors hereby approves the Sublease to FCA of
5 approximately 24,169 square feet of space located at Building 140, the Nimitz Conference
6 Center, and nonexclusive use of the parking lot adjacent to the leased building, and
7 authorizes the Director of Island Operations or her designee to execute said Sublease in
8 substantially the form attached hereto as Exhibit A; and be it

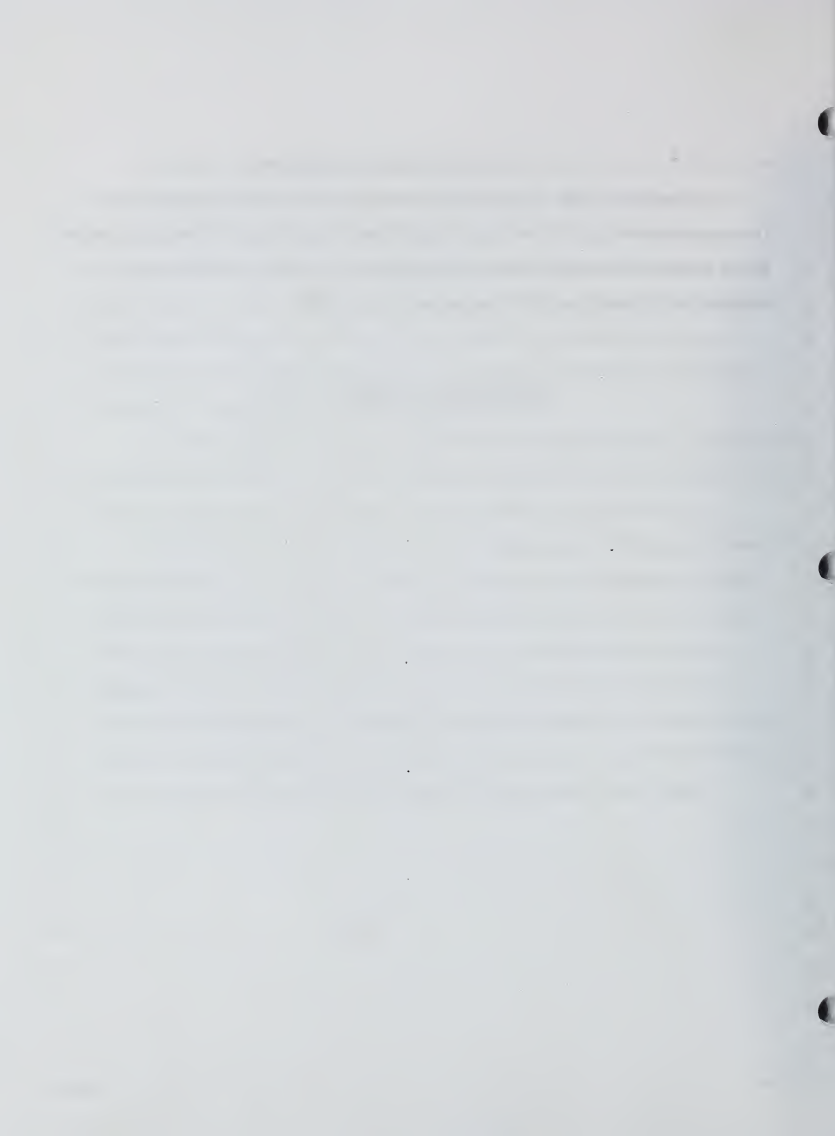
9 FURTHER RESOLVED, That the Board of Directors hereby finds that (i) entering into
10 the Sublease will serve the goals of the Authority and the public interests of the City, and (ii)
11 the terms and conditions of the Sublease are economically reasonable; and be it

12 FURTHER RESOLVED, That the Board of Directors hereby authorizes the Director of
13 Island Operations to enter into any additions, amendments or other modifications to the
14 Sublease that the Director of Island Operations determines in consultation with the City
15 Attorney are in the best interests of the Authority, that do not materially increase the
16 obligations or liabilities of the Authority, that do not materially reduce the rights of the
17 Authority, and are necessary or advisable to complete the preparation and approval of the
18 Sublease, such determination to be conclusively evidenced by the execution and delivery by
19 the Director of Island Operations of the documents and any amendments thereto.
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5



ITEM 9(I) – EXHIBIT A

SUBLEASE No. 37

between

TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

**FCA ARTISTS, INC.,
a California corporation**

as Subtenant

For the Sublease of

**Building 140,
the Nimitz Conference Center**

**Treasure Island Naval Station
San Francisco, California**

June 12, 2008

TREASURE ISLAND SUBLEASE

Table of Contents

<u>Section</u>	<u>Page</u>
1. BASIC SUBLEASE INFORMATION.....	1
2. PREMISES	4
3. COMPLIANCE WITH MASTER LEASE	7
4. TERM.....	7
5. RENT	9
6. TAXES, ASSESSMENTS AND OTHER EXPENSES.....	9
7. USE; COVENANTS TO PROTECT PREMISES.....	10
8. ALTERATIONS	11
9. REPAIRS AND MAINTENANCE.....	13
10. LIENS	14
11. COMPLIANCE WITH LAWS.....	14
12. ENCUMBRANCES	15
13. DAMAGE OR DESTRUCTION	16
14. ASSIGNMENT AND SUBLETTING	16
15. DEFAULT; REMEDIES.....	17
16. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION	18
17. INSURANCE.....	21
18. ACCESS BY SUBLANDLORD	23
19. SURRENDER.....	24
20. HAZARDOUS MATERIALS.....	25
21. GENERAL PROVISIONS	27
22. SPECIAL PROVISIONS	31

LIST OF EXHIBITS:

- EXHIBIT A – Master Lease
- EXHIBIT B – Diagram of Premises
- EXHIBIT C – Cover Page of Seismic Report
- EXHIBIT D – Rules and Regulations
- EXHIBIT D-1 – Special Event Rules and Regulations
- EXHIBIT E – Utilities
- EXHIBIT F – TIHDI Work Force Hiring Plan

TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated for reference purposes only as of June 12, 2008, is by and between the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit corporation ("Sublandlord"), and FCA ARTISTS, INC., a California corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated November 14, 1998, as amended from time to time (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord certain real property located on Treasure Island Naval Station (the "Property"), as more particularly described in the Master Lease.

B. Subtenant desires to sublet from Sublandlord, and Sublandlord is willing to sublet to Subtenant, a portion of the Property on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. BASIC SUBLEASE INFORMATION

The following is a summary of basic sublease information (the "Basic Sublease Information"). Each item below shall be deemed to incorporate all of the terms of this Sublease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Sublease, the more specific provision shall control.

Sublease Reference Date: June 12, 2008

Sublandlord: TREASURE ISLAND DEVELOPMENT
AUTHORITY, a California public benefit
corporation

Subtenant: FCA ARTISTS, INC., a California corporation

Subleased Premises (Section 2.1):	Approximately Twenty Four Thousand One Hundred and Sixty Nine (24,169) square feet of space located at Building 140, the Nimitz Conference Center, and nonexclusive use of the parking lot adjacent to Building 140, Treasure Island, San Francisco, as more particularly shown on <u>Exhibit B</u> , attached hereto.
Facility:	Building 140
Term: (Section 4.1):	Commencement date: June 12, 2008 Expiration date: November 30, 2008 Notwithstanding anything in this Sublease to the contrary, either Sublandlord or Subtenant, in its sole discretion, may terminate this Sublease for any reason upon delivery of not less than thirty (30) days' prior written notice to the other party.
Base Rent (Section 5.1):	Early Entry: Commencing June 12, 2008 and ending August 31, 2008, the Subtenant shall be provided eighty-one (81) days of Early Entry for the sole purpose of installing equipment, painting and cleaning the facility. During the Early Entry period, Subtenant shall not pay Base Rent but shall be subject to all other terms and conditions set forth in the Sublease Commencing September 1, 2008, Monthly Base Rent shall be Six Thousand Forty Two Dollars and Twenty Five Cents (\$6,042.25) per month (\$.25 per square foot)
Rent Adjustment Date(s) (Section 5.2):	Not applicable
Rent Increase Percentage (Section 5.2):	Not applicable

Use (Section 7.1):

General administrative office, storage, recording studio, and events and conference center which shall provide entertainment, food and beverage service as outlined in Exhibit D-1 of the Sublease and Section 4 of the Event Venues Master Lease.

Subtenant shall be prohibited from using the Premises for adult entertainment uses as defined in Section 890.36 of the San Francisco Planning Code.

Subtenant shall be required to obtain a Place of Entertainment Permit pursuant to Section 1060 of the San Francisco Police Code prior to commencing operations on the Premises.

Repair Amount (Section 13.1):

Ten Thousand Dollars (\$10,000)

Security Deposit (Section 19.3):

Twelve Thousand Eighty Four Dollars and Fifty Cents (\$12,084.50)

Notice Address of Sublandlord (Section 21.1):

Treasure Island Development Authority
Treasure Island Project Office
410 Avenue of Palms
Building 1, 2nd Floor
Treasure Island
San Francisco, CA 94130
Attn: Mirian Saez
Director of Island Operations
Fax No.: 415-274-0299

with a copy to:
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Eileen M. Malley
Fax No.: (415) 554-4755

Notice Address of Subtenant (Section 21.1):

FCA ARTISTS, INC.
The Nimitz Conference Center
401 California Street
Treasure Island
San Francisco, Ca 94130
Attn: Sam Conti
Telephone No. (415) 765-0680
Fax No. (415) 765-0689

Notice Address of Master Landlord (Section 21.1):

Department of The Navy
Base Realignment and Closure
Program Management Office West
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310
Fax #: (619) 532-9858

2. PREMISES

2.1. Subleased Premises. Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises. Subtenant shall have the non-exclusive right to use, together with other subtenants in the Facility, the lobbies, corridors, elevators, stairways and other public areas of the Facility and the Property (collectively, the "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Facility and the Property.

In the event Subtenant uses or occupies space outside the Premises without the prior written consent of Sublandlord (the "Encroachment Area"), then upon written notice from Sublandlord ("Notice to Vacate"), Subtenant shall immediately vacate such Encroachment Area and pay as additional rent for each day Subtenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by Sublandlord's Board of Directors for the Premises or the Facility, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Sublandlord (the "Encroachment Area Charge"). If Subtenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Sublandlord of the Encroachment Area Charge be deemed a consent by Sublandlord to the use or occupancy of the Encroachment Area by Subtenant or a waiver (or be deemed as waiver) by Sublandlord of any and all other rights and remedies of Sublandlord under this Sublease (including Subtenant's obligation to indemnify, defend and hold Sublandlord harmless as set forth in the last paragraph of this Section 2.1), at law or in equity.

In addition to the foregoing amount, Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to

Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Sublandlord determines during subsequent inspection(s) that Subtenant has failed to vacate the Encroachment Area, then Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Sublandlord to Subtenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Sublandlord will incur by reason of Sublandlord's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Subtenant's failure to comply with the applicable Notice to Vacate and Sublandlord's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Sublandlord under this Sublease, at law or in equity. The amounts set forth in this Section 2.1 shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area.

In addition to the rights and remedies of Sublandlord as set forth in the immediately foregoing two paragraphs of this Section 2.1, the terms and conditions of the indemnity and exculpation provision set forth in Section 16 below shall also apply to Subtenant's use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Subtenant shall additionally indemnify, defend and hold Sublandlord harmless from and against any and all loss or liability resulting from delay by Subtenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any claims against Sublandlord made by any tenant or prospective tenant founded on or resulting from such delay and losses to Sublandlord due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 2.1 and the reasonableness of the amount of the charges described in this Section 2.1.

Initials: _____ Sublandlord _____ Subtenant

2.2. As Is Condition of Premises.

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Subtenant's Agents"), of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of

its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 2.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises ("Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below), (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use by Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 2.2(b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that any structures or improvements located on or about the Premises,

may fail structurally and collapse.

3. COMPLIANCE WITH MASTER LEASE

3.1. Incorporation by Reference. All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

3.2. Performance of Master Landlord's Obligations. Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

3.3. Conflict. If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

3.4. Compliance with Master Lease. Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

4. TERM

4.1. Term of Sublease. The term of this Sublease (the "Term") shall commence on the Commencement Date set forth in the Basic Sublease Information, and expire on the Expiration Date set forth in the Basic Sublease Information, unless sooner terminated pursuant to the terms of this Sublease.

4.2. Effective Date. This Sublease shall become effective on the date (the "Effective Date") upon the later of (i) the Parties' execution and delivery of this Sublease, (ii) Sublandlord's Board of Director's approval of this Sublease at a duly noticed meeting, if such approval is required, or (iii) the Commencement Date.

4.3. Automatic Termination. If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be

terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

4.4. Termination by Sublandlord. Subtenant's period of occupancy of the Premises is subject to Sublandlord's right to terminate this Sublease as provided herein at such time as Sublandlord determines, in its sole discretion, that the Premises are needed in connection with a Sublandlord program or project. As used herein, "Sublandlord program or project" shall mean any development or renovation, by public and/or private parties, of the building or land in or on which the Premises are located. In the event of any such development or renovation, Sublandlord shall have the right to terminate this Sublease without liability or expense upon delivery to Subtenant of thirty (30) days prior written notice of such termination. Subtenant agrees and shall be required to surrender possession of the Premises by the end of such thirty (30) day period.

4.5. No Relocation Assistance; Waiver of Claims. Subtenant acknowledges that it will not be a displaced person as that term is defined under the California Government Code Section 7260 et seq. ("California Relocation Act") and the Uniform Relocation Assistance and Real Property Policies Act, 42 U.S.C. 4601 et seq. ("URA"), and that Subtenant will not be entitled to any relocation benefits provided under the California Relocation Act and the URA, including any moving expenses, reimbursement for costs associated with increased rent, loss of goodwill or other costs related to the termination of Subtenant's Lease and Subtenant's relocation from the Premises. Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, agents, contractors and successors and assigns and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260, et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4601, et seq.).

Initials: _____ Subtenant

5. RENT

5.1. **Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Base Rent in the amount set forth in the Basic Sublease Information. Base Rent shall be paid to Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 21.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

5.2. **Adjustments in Base Rent.** If this Sublease has not been terminated, then on each Rent Adjustment Date set forth in the Basic Sublease Information, the Base Rent shall be increased by the Rent Increase Percentage set forth in the Basic Lease Information.

5.3. **Additional Charges.** In addition to Base Rent, Subtenant shall pay all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder, all utility charges, and any amounts other than Base Rent that shall become due and payable by Subtenant under this Sublease (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

5.4. **Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

5.5. **Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

6.2. Evidence of Payment. Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES

7.1. Subtenant's Permitted Use. Subtenant may use the Premises for the Permitted Use set forth in the Basic Sublease Information, but for no other purpose without the prior written consent of Sublandlord, which consent may be given or withheld in Sublandlord's sole and absolute discretion.

7.2. Subtenant's Access to the Premises. As provided in Section 30 of the Master Lease, Subtenant shall have access to the Premises on a 24-hours per day, seven days a week basis; provided, however, Subtenant shall coordinate such access with the local representative of Master Landlord.

7.3. **Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

7.4. **Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"); provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

7.5. **No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over Subtenant's use of the Premises in the event of any conflict; provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

7.6. **No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas on or about the Property outside of the Premises.

8. ALTERATIONS

8.1. **Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may be given or withheld in

Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications for any Alterations approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of construction on the Premises at all times.

8.2. Historic Properties. Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to any improvements on the Premises (i) which will affect the historic characteristics of the improvements or modify the appearance of the exterior of the improvements without Master Landlord's and Sublandlord's prior written consent, or (ii) if such Alterations would preclude qualifying the improvements for inclusion on the National Register for Historic Places.

8.3. Ownership of Alterations. Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 8 shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 19 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 8.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

8.4. Subtenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment used upon or installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and shall be removed by Subtenant, subject to the provisions of Section 19 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

8.5. Sublandlord's Alterations. Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the improvements on the Premises; provided, that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the purposes stated herein.

9. REPAIRS AND MAINTENANCE

9.1. **Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

9.2. **Utilities.** Sublandlord shall provide the basic utilities and services described in the attached Exhibit E (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole cost, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

9.3. **Landscaping.** Subtenant shall maintain the exterior landscaping of the Premises in good condition and repair.

9.4. **Janitorial Services.** Subtenant shall provide all janitorial services for the Premises.

9.5. **Pest Control.** Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

9.6. **Trash.** Subtenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations attached hereto as Exhibit F. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

9.7. **No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any

part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

10. LIENS

10.1. Liens. Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

11. COMPLIANCE WITH LAWS

11.1. Compliance with Laws. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary; provided, however Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below), and all applicable provisions of the San Francisco Environment Code. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2. Regulatory Approvals.

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation, any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") Sublandlord, City and Master Landlord, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties"), against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

11.3. Compliance with Sublandlord's Risk Management Requirements. Subtenant shall not do anything, or permit anything to be done, in or about the Premises or to any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

12. ENCUMBRANCES

12.1. Encumbrance By Subtenant. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

13. DAMAGE OR DESTRUCTION

13.1. Damage or Destruction to the Premises. In the case of damage to or destruction of the Premises by earthquake, fire, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in Section 17 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more to repair than the Repair amount set forth in the Basic Lease Information, either party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 19 (except for damage caused by a casualty pursuant to which this Sublease may be terminated under this Section 13.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 13.1, then Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 8.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

13.2. No Abatement in Rent. In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 13.1 above, there shall be no abatement in the Rent payable hereunder.

13.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

14. ASSIGNMENT AND SUBLETTING

14.1. Restriction on Assignment and Subletting. Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, sublease or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (a "Transfer"), without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion. Subtenant shall provide Sublandlord with a written notice of its intention to Transfer this Sublease or the Premises, together with a copy of the proposed Transfer agreement at least thirty (30) days prior to the commencement date of the proposed Transfer. Subtenant shall provide Sublandlord with such information regarding the proposed Transfer as Sublandlord may reasonably request.

14.2. Bonus Rental. If Sublandlord consents to a Transfer of any of Subtenant's interest in or rights with respect to the Premises pursuant to Section 14.1 above, then one hundred percent (100%) of any rent or other consideration payable to Subtenant in excess of the Base Rent payable hereunder (or the proportionate share thereof applicable to the portion of the Premises that is subject to the Transfer) shall be paid to Sublandlord immediately upon receipt by Subtenant.

15. DEFAULT; REMEDIES

15.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

- (a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;
- (b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease; provided, Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord;
- (c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days;
- (d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted; and
- (e) **Notices of Default.** The delivery to Subtenant of three (3) or more notices of default within any twelve (12) month period, irrespective of whether Subtenant actually cures such default within the specified time period, may, in the sole and absolute discretion of the Authority, be deemed an incurable breach of this Sublease allowing the Authority to immediately terminate this Sublease without further notice or demand to Subtenant.

15.2. Remedies. Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

15.3. Sublandlord's Right to Cure Subtenant's Defaults. If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

16. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

16.1. Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused solely by the gross negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not

take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties' decision to Sublease the Premises to Subtenant,

regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 16.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

16.2. Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Subtenant's use of the Premises, including but not limited to, any Losses arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of

the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises; and (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, in, on, or about the Premises or any Alterations, except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

17. INSURANCE

17.1. Required Insurance Coverage. Subtenant, at its sole cost and expense, shall maintain, or cause to be maintained, through the Term of this Sublease, the following insurance:

(a) **General Liability Insurance.** Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than One Million Dollars (\$1,000,000), explosion, collapse and underground (XCU).

(b) **Automobile Liability Insurance.** Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Subtenant's activity on the Premises or the Permitted Use.

(c) **Worker's Compensation and Employer's Liability Insurance.** If Subtenant has employees, Worker's Compensation Insurance in statutory amounts with Employer's Liability with limits not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) **Personal Property Insurance.** Subtenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Subtenant for the replacement of

Subtenant's personal property.

(e) **Other Coverage.** Such other insurance or different coverage amounts as is required by law or as is generally required by commercial owners of property similar in size, character, age and location as the Premises, as may change from time to time, or as may be required by the City's Risk Manager.

17.2. Claims-Made Policies. If any of the insurance required in Section 17.1 above is provided under a claims-made form of policy, Subtenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Sublease, to the effect that should occurrences during the Term give rise to claims made after termination of this Sublease, such claims shall be covered by such claims-made policies.

17.3. Annual Aggregate Limits. If any of the insurance required in Section 17.1 above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

17.4. Payment of Premiums. Subtenant shall pay the premiums for maintaining all required insurance.

17.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Sublandlord and Subtenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Sublease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

17.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Subtenant hereunder shall contain a cross-liability clause, shall name as additional insureds the "THE TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the additional insureds with respect to claims arising under this Sublease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the

company's liability.

(b) All insurance policies required to be maintained by Subtenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Sublandlord with an AM Best rating of not less than A-VIII and authorized to do business in the State of California.

(c) All insurance policies required to be maintained by Subtenant hereunder shall provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Subtenant and Sublandlord. Such notice shall be given in accordance with the notice provisions of Section 21.1 below.

(d) Subtenant shall deliver to Sublandlord certificates of insurance and additional insured policy endorsements in a form satisfactory to Sublandlord evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Subtenant shall, upon Sublandlord's request, promptly furnish Sublandlord with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days' prior written notice, Sublandlord may require Subtenant to increase the insurance limits set forth in Section 17.1 above if Sublandlord finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Subtenant with respect to risks comparable to those associated with the use of the Premises.

(f) Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

(g) Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

18. ACCESS BY SUBLANDLORD

18.1. Access to Premises by Sublandlord.

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord,

Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

18.2. Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

19. SURRENDER

19.1. Surrender of the Premises. Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 8.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

19.2. No Holding Over. If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord

against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises. Subtenant shall have no right to hold over without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and absolute discretion. If Sublandlord holds over the Premises or any part thereof after expiration or earlier termination of this Sublease, such holding over shall be terminable upon written notice by Sublandlord, and the Base Rent shall be increased to two hundred percent (200%) of the Base Rent in effect immediately prior to such holding over, and such holdover shall otherwise be on all the other terms and conditions of this Sublease. This Section shall not be construed as Sublandlord's permission for Subtenant to hold over. Acceptance of any holdover Base Rent by Sublandlord following expiration or termination of this Sublease shall not constitute an extension or renewal of this Sublease.

19.3. Security Deposit. Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount set forth in the Basic Sublease Information as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Subtenant within forty-five (45) days of the termination of this Sublease.

20. HAZARDOUS MATERIALS

20.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos

containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Subtenant agrees that it shall comply, without limiting the foregoing, with the provisions of Article 21 of the San Francisco Health Code including, without limitation, regarding obtaining and complying with the requirements of an approved hazardous materials management plan, and with the requirements of the environmental protection provisions provided for in Section 13 of the Master Lease.

20.2. Subtenant's Environmental Indemnity. If Subtenant breaches any of its obligations contained in Section 20.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 16.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and

penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

20.3. Acknowledgment of Receipt of EBS and FOSL Reports. Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Subtenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises as described in the EBS and the FOSL. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 et seq., requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Sublease, Subtenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 et seq., 25359.7 and related statutes.

21. GENERAL PROVISIONS

21.1. Notices. Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to the appropriate addresses set forth in the Basic Sublease Information. Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 21.1 and applicable Laws, shall be deemed receipt of such notice.

21.2. No Implied Waiver. No failure by Sublandlord to insist upon the strict performance of

any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment of Rent due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

21.3. Amendments. Neither this Sublease nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

21.4. Authority. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosures set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

21.5. Joint and Several Obligations. The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

21.6. Interpretation of Sublease. The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord

holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

21.7. Successors and Assigns. Subject to the provisions of Section 14, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

21.8. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

21.9. Severability. If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

21.10. Governing Law. This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

21.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's

Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

21.12. Attorneys' Fees. In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Sublease, reasonable fees of attorneys in the Office of the San Francisco City Attorney (Sublandlord's General Counsel) shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Further, for purposes of this Sublease, the term "attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. The term "attorney" shall have the same meaning as the term "counsel".

21.13. Time of Essence. Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

21.14. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

21.15. Survival of Indemnities. Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

21.16. Relationship of Parties. Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be

construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

21.17. Recording. Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

21.18. Non-Liability of Indemnified Parties' Officials, Employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Sublease.

21.19. No Discrimination. Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

21.20. Counterparts. This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21.21. Master Landlord's Consent. This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord.

22. SPECIAL PROVISIONS

22.1. Signs. Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

22.2. Public Transit Information. Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

22.3. TIHDI Job Broker. Subtenant shall comply with the requirements of the TIHDI Work Force Hiring Plan attached hereto as Exhibit F.

22.4. Local Hiring. Subtenant further agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Subtenant's personnel needs and to contract with local businesses for Subtenant's purchase of supplies, materials, equipment or services.

22.5. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Sub-Subleases and Other Subcontracts.** Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Sublease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **HRC Form.** As a condition to this Sublease, Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, (i) Subtenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation; and (ii) the HRC approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

22.6. MacBride Principles - Northern Ireland. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

22.7. Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Section 802(b) and 803(b) of the San Francisco Environment Code, Subtenant shall not provide any items to the construction of tenant improvements or Alterations in the Premises, or otherwise in the performance of this Sublease, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

22.8. Conflicts of Interest. Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

22.9. Wages and Working Conditions. Subtenant agrees that any person performing labor in

the construction of any tenant improvements and any Alterations to the Premises, which Subtenant provides under this Sublease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Subtenant shall include, in any contract for construction of such tenant improvements and Alterations, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord upon request, certified payroll reports with respect to all persons performing labor in the construction of such tenant improvement work or any Alterations to the Premises.

22.10. Prohibition of Tobacco Advertising. Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Sublandlord or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

22.11. Pesticide Prohibition. Subtenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Subtenant to submit to Sublandlord an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant may need to apply to the Premises during the terms of this Sublease, (b) describes the steps Subtenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Subtenant's primary IPM contact person with the City. In addition, Subtenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

22.12. First Source Hiring Ordinance. The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after Sublandlord adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Subtenant shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

22.13. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for

Proposals, and all other records of communications between City departments and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

22.14. Conflicts of Interest. Through its execution of this Sublease, Subtenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Subtenant becomes aware of any such fact during the Term of this Sublease, Subtenant shall immediately notify Sublandlord.

22.15. Charter Provision. This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

22.16. Requiring Health Benefits for Covered Employees. Unless exempt, Subtenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Sublease as though fully set forth. The text of the HCAO is available on the web at www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml. Capitalized terms used in this Section and not defined in this Sublease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Subtenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Subtenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

(c) Subtenant's failure to comply with the HCAO shall constitute a material breach of this Sublease. Sublandlord shall notify Subtenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Sublease for violating the HCAO, Subtenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Subtenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Sublandlord shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be

exercisable individually or in combination with any other rights or remedies available to Sublandlord.

(d) Any Subcontract entered into by Subtenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Subtenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Sublandlord may pursue the remedies set forth in this Section against Subtenant based on the Subcontractor's failure to comply, provided that Sublandlord has first provided Subtenant with notice and an opportunity to obtain a cure of the violation.

(e) Subtenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Sublandlord with regard to Subtenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Subtenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Subtenant shall keep itself informed of the current requirements of the HCAO.

(h) Subtenant shall provide reports to Sublandlord in accordance with any reporting standards promulgated by Sublandlord under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Subtenant shall provide Sublandlord with access to records pertaining to compliance with the HCAO after receiving a written request from Sublandlord to do so and being provided at least five (5) business days to respond.

(j) Sublandlord may conduct random audits of Subtenant to ascertain its compliance with HCAO. Subtenant agrees to cooperate with Sublandlord when it conducts such audits.

(k) If Subtenant is exempt from the HCAO when this Sublease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) (or [Fifty Thousand Dollars (\$50,000) if Subtenant is a qualified nonprofit], but Subtenant later enters into an agreement or agreements that cause Subtenant's aggregate amount of all agreements with Sublandlord to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant and the Contracting Department to be equal to or

greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

22.17. Notification of Limitations on Contributions. Through its execution of this Sublease, Subtenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

22.18. Preservation-Treated Wood Containing Arsenic. As of July 1, 2003, Subtenant may not purchase preservative-treated wood products containing arsenic in the performance of this Sublease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Subtenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

22.19. Resource Efficient City Buildings and Pilot Projects. Subtenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Subtenant hereby agrees that it shall comply with all applicable provisions of such code sections.

22.20. Food Service Waste Reduction. Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully set forth. This provision is a material term of this

Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Sublandlord will suffer actual damages that will be impractical or extremely difficult to determine; further, Subtenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Sublandlord will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Sublandlord because of Subtenant's failure to comply with this provision.

22.21. Estoppel Certificates. At any time and from time to time, within ten (10) days after Sublandlord's request, Subtenant will execute, acknowledge and deliver to Sublandlord a statement certifying the following matters: (a) the Commencement Date and Expiration Date of this Sublease; (b) that this Sublease is unmodified and in full force and effect (or if there have been modifications, that this Sublease is in full force and effect as modified and the date and nature of such modifications); (c) the dates to which the Rent has been paid; (d) that there are no Events of Default under this Sublease (or if there are any Events of Default, the nature of such Event of Default); and (e) any other matters reasonably requested by Sublandlord. Sublandlord and Subtenant intend that any such statement delivered pursuant to this paragraph may be relied upon by any assignee of Sublandlord's interest in the Master Lease or this Sublease, any mortgagee or any purchaser or prospective purchaser of the building or land on which the Premises are located. Subtenant irrevocably appoints Sublandlord, as Subtenant's agent, to execute and deliver in the name of Sublandlord any such instrument if Subtenant fails to do so, which failure shall also be an Event of Default under this Sublease.

22.22. Addendum. The terms of the Addendum, if any, attached to this Sublease are incorporated into the Sublease by reference. In the event of any inconsistency between the Sublease and the Addendum, the terms of the Addendum shall control.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

SUBTENANT:

**FCA ARTISTS, INC.
a California corporation**

By: _____
Sam Conti
President

SUBLANDLORD:

Treasure Island Development Authority

By: _____
Mirian Saez
Director of Island Operations

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

Sublease Prepared By: Richard A. Rovetti, Leasing Manager _____
(initial)

EXHIBIT A

MASTER LEASE

EXHIBIT B

DIAGRAM OF PREMISES

EXHIBIT C

COVER PAGE OF THE SEISMIC REPORT

EXHIBIT D

RULES AND REGULATIONS

1. All rules and regulations set out in the Master Lease shall prevail.
2. No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the Building or elsewhere on the Property, without prior written approval of Sublandlord.
3. Subtenant's contractors and invitees, while on the Premises or Subtenant's parking area, shall be subject to these Rules and Regulations, and will be subject to direction from Sublandlord and its agents, but will not be an agent or contractor of the Sublandlord or its agents. Subtenant's contractors shall be licensed by the State, insured and bonded at the amount requested by the Sublandlord.
4. Subtenant shall install and maintain at Subtenant's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises.

ADDITIONAL RULES AND REGULATIONS FOR SPECIAL EVENT USE OF THE PREMISES (see Exhibit D-1)

EXHIBIT D-1

TREASURE ISLAND DEVELOPMENT AUTHORITY SPECIAL EVENT RULES AND REGULATIONS

1. **CATERING PROVISIONS:** Catering must be provided by a licensed and insured commercial catering company. Alcohol must be served by a licensed and insured company with the required liquor liability insurance coverage.
2. **ACCESS:** Venues are available for use between the hours of 8AM and 2AM, including all load-in, load-out, set-up, and breakdown.
3. **SMOKING:** Smoking is not permitted inside any facility.
4. **ITEMS NOT PERMITTED ON PREMISES:** This list includes, but is not limited to the following: bottled gas in any form, "fog" or "smoke" producing equipment, rice for throwing, confetti or glitter, torches or luminaries, fireworks of any kind, including sparklers and fire crackers, and guns or weapons of any kind.
5. **KITCHEN/PREP ROOM:** No disposal of food items, grease, coffee grounds, etc. in kitchen or prep room sinks is allowed.
6. **GARBAGE:** Event sponsor and caterer are responsible for removal of all ice and garbage at the conclusion of the event.
7. **USE OF CANDLES, OPEN FLAME, AND OTHER FIRE PRODUCING/HEATING MECHANISMS:** Event sponsor and its vendors should not use or bring onto the Premises any form of bottled gas. Propane heat lamps require an LPG Permit through the San Francisco Fire Department, as well as a Fire Watch. Candles may be used only with candleholders meeting specifications of the San Francisco Fire Code (ie. candleholders must extend at least 2" above the flame).
8. **SIGNS:** No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the buildings or elsewhere on the Property, without prior written approval of the Treasure Island Development Authority. Such approved signs must be removed at the termination of the designated rental period, or at the request of the Treasure Island Development Authority.
9. **BARBECUES:** Personal barbecues may be brought into the picnic areas so long as they have legs or stands and are not placed directly on the grass. Thoroughly quench the fire after using the barbecues. Live coals must not be put on grass or into trash receptacles. Event sponsor must remove ash, coals, and other barbecue debris.
10. **PORTABLE RESTROOMS:** Events in outdoor areas must provide portable restrooms at the ratio of one (1) restroom for each 200 persons in attendance, one in eight of which must meet ADA specifications.

11. **TENTS:** All tents must be certified to withstand 70 mph winds and installed according to manufacturers instructions. Event sponsor must obtain a tent permit through the San Francisco Fire Department for any tent over 200 square feet. Event sponsor must also obtain an Excavation Permit from the Public Utilities Commission. All tents and heating devices must comply with fire and life safety regulations and must be inspected and approved by the San Francisco Fire Department Inspector. Any holes created by tent stakes must be filled immediately after breakdown. The Premises must be swept thoroughly of all tent debris (screws, nails, rope, zip-ties, etc.) after tent breakdown.

12. **INSURANCE:** In addition to the insurance coverages described in Section 17(a) of the Sublease, the commercial general liability insurance maintained by Subtenant shall include host liquor liability coverage.

EXHIBIT E

STANDARD UTILITIES AND SERVICES AND RATES

Utilities Rate Schedule

Utility Service	Rate	Unit
Electric Rate	\$ 0.14	per kwh
Water Rate	\$ 5.40	per kgal
Sewer Rate	\$ 5.75	per kgal
Gas Rate	\$ 0.60	per therm

Rates are subject to adjustment.

Subtenant shall install utility Submeters to the satisfaction of Sublandlord.

Subtenant shall arrange for delivery of utility services to the premises by making a "Request for Utilities Services" by contacting:

San Francisco Public Utilities Commission
c/o Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Mr. Vic Zorzinsky
(415) 274-0333

EXHIBIT F

TIHDI WORKFORCE HIRING AGREEMENT

AGENDA ITEM 9(J)
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Approving and Authorizing the Execution of a Sublease with James Payne, an individual doing business as Downtown Auto Sales-Storage for Parcel A: approximately 4,275 square feet of space at Building 41; and Parcel B: approximately 9,000 square feet of paved land located at the west side of Building 41, Treasure Island (Action Item)

Contact: Richard A. Rovetti, Leasing Manager

Phone: 415-274-3365

BACKGROUND

James Payne, an individual doing business as Downtown Auto Sales-Storage (hereafter referred to as "James Payne"), has been in business for over 30 years. James Payne is requesting to enter into a month-to-month Sublease with the Treasure Island Development Authority (hereafter referred to as the "Authority") for Parcel A: approximately 4,275 square feet of space at Building 41; and Parcel B: approximately 9,000 square feet of paved land located at the west side of Building 41 effective June 12, 2008.

SUBLEASE TERMS AND CONDITIONS

The salient terms and conditions of the proposed Sublease include the following:

Premises: Parcel A: approximately 4,275 square feet of space at Building 41; and Parcel B: approximately 9,000 square feet of paved land located at the west side of Building 41

Location: Building 41

Commencement Date: June 12, 2008

Lease Expiration Date: November 30, 2008

Lease Term: Month-to-Month

Base Rent: Early Entry:
Commencing June 12, 2008 and ending June 30, 2008, the Subtenant shall be provided nineteen (19) days of Early Entry for the sole purpose of installing equipment and cleaning the facility. During the Early Entry period, Subtenant shall not pay Base Rent but shall be subject to all other terms and conditions set forth in the Sublease.

Commencing July 1, 2008, Monthly Base Rent shall be: Parcel A: One Thousand Sixty Eight Dollars and Seventy Five Cents (\$1,068.75) per month (\$.25 per square foot); and Parcel B: Nine Hundred Dollars (\$900.00) per month (\$.10 per square foot)
Total: \$1,968.75 per month

Use: General office and vehicle storage only and for no other purpose.

Security Deposit: \$3,937.50

PROPOSED MONTHLY BASE RENT

Under the Authority's Interim Subleasing Policy, the Minimum Rental Rate Schedule sets ranges of minimum sublease rental rates per square foot by type of use and facility for office and industrial space. Authority Staff reviews and analyzes available commercial data including market comparables of properties similarly situated to the Authority properties and evaluates the Authority transactions over the past 12 months to establish fair market value. The Authority Board last approved the Minimum Rental Rate Schedule in July 2007, by Resolution No. 07-54-07/11. However, when the appraisal was conducted, Building 41 was excluded from the properties being appraised.

Authority Staff and James Payne have negotiated a new Sublease with a monthly rental rate of \$.25 per square foot. Although a rental rate for this property has not been established, Authority Staff believes \$.25 per square foot represents fair market value for this building at this time.

FINANCIAL IMPACT

The new Sublease will provide an increase of approximately \$23,625.00 per year to the Authority's budget.

RECOMMENDATION

The Authority Staff recommends that the Authority Board of Directors approve the proposed Sublease with James Payne, an individual doing business as Downtown Auto Sales-Storage, and authorize the Director of Island Operations or her designee to execute said Sublease for Parcel A: approximately 4,275 square feet of space at Building 41; and Parcel B: approximately 9,000 square feet of paved land located at the west side of Building 41, Treasure Island, for a month-to-month term and subject to the additional terms and conditions set forth above.

EXHIBIT

EXHIBIT A – Sublease between the Treasure Island Development Authority and James Payne, an individual doing business as Downtown Auto Sales-Storage

Prepared by: Richard A. Rovetti, Leasing Manager
For: Mirian Saez, Director of Island Operations

1 [Sublease with James Payne, an individual doing business as Downtown Auto Sales-Storage]
2 **Resolution Approving and Authorizing the Execution of a Sublease with James Payne,**
3 **an individual doing business as Downtown Auto Sales-Storage for Building 41,**
4 **Treasure Island.**

5 WHEREAS, Former Naval Station Treasure Island is a military base located on
6 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by
7 the United States of America, acting by and through the Department of the Navy; and,

8 WHEREAS, The Base was selected for closure and disposition by the Base
9 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its
10 subsequent amendments; and,

11 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,
12 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit
13 corporation known as the Treasure Island Development Authority (the "Authority") to act as a
14 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and
15 conversion of the Base for the public interest, convenience, welfare and common benefit of
16 the inhabitants of the City and County of San Francisco (the "City"); and,

17 WHEREAS, James Payne, an individual doing business as Downtown Auto Sales-
18 Storage (hereafter referred to as "James Payne"), has been in business for over 30 years;
19 and,

20 WHEREAS, Under the proposed Sublease, James Payne is requesting a month-to-
21 month Sublease for Parcel A: approximately 4,275 square feet of space at Building 41; and
22 Parcel B: approximately 9,000 square feet of paved land located at the west side of Building
23 41 located on Treasure Island, with a monthly base consisting of Parcel A: \$1,068.75 (\$.25
24 per square foot); and Parcel B: \$900.00 (\$.10 per square foot) totaling \$1,968.75 per month

1 commencing July 1, 2008, and 19 days of early entry from June 12, 2008 through June 30,
2 2008, for the sole purpose of installing equipment and cleaning the facility; and,

3 WHEREAS, Although the Authority has not conducted an appraisal of Building 41,
4 Authority Staff believes that the proposed base rent of \$1,968.75 per month represents fair
5 market value for this Sublease at this time; now, therefore, be it

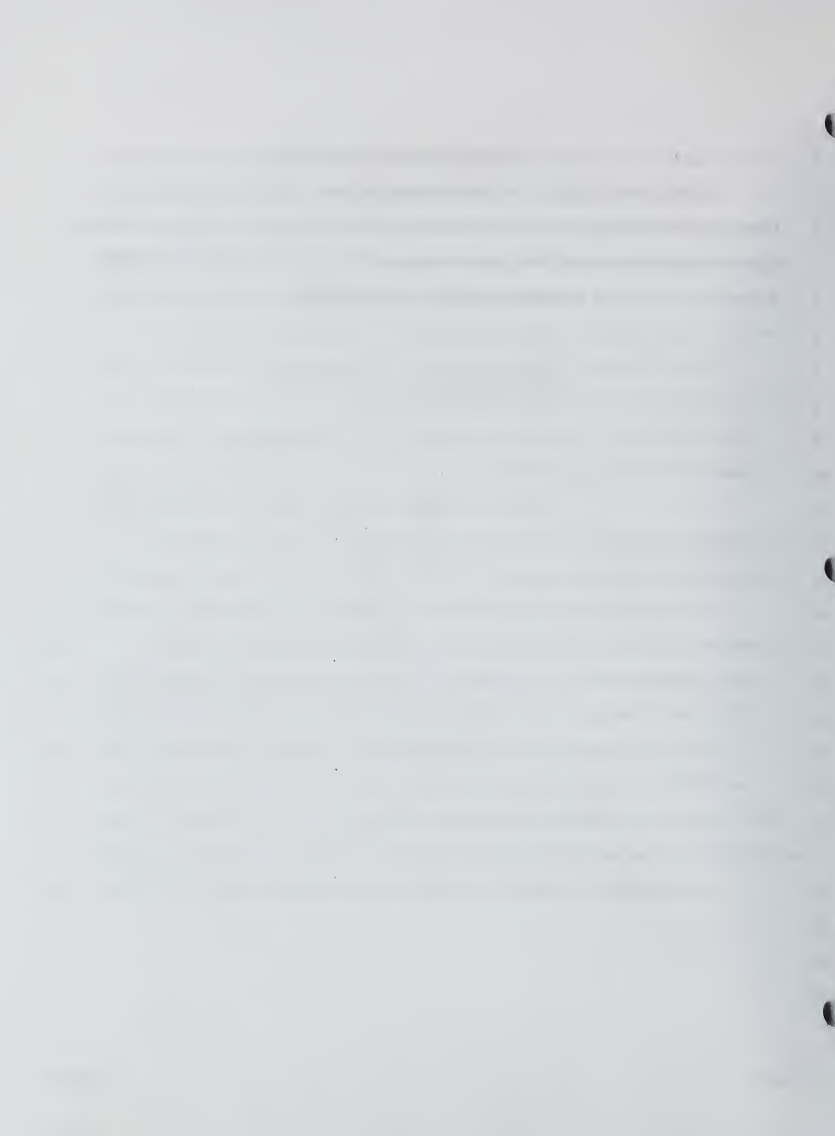
6 RESOLVED, That the Board of Directors hereby approves the Sublease to James
7 Payne, an individual doing business as Downtown Auto Sales-Storage for Parcel A:
8 approximately 4,275 square feet of space at Building 41; and Parcel B: approximately 9,000
9 square feet of paved land located at the west side of Building 41, Treasure Island, and
10 authorizes the Director of Island Operations or her designee to execute said Sublease in
11 substantially the form attached hereto as Exhibit A; and be it

12 FURTHER RESOLVED, That the Board of Directors hereby finds that (i) entering into
13 the Sublease will serve the goals of the Authority and the public interests of the City, and (ii)
14 the terms and conditions of the Sublease are economically reasonable; and be it

15 FURTHER RESOLVED, That the Board of Directors hereby authorizes the Director of
16 Island Operations to enter into any additions, amendments or other modifications to the
17 Sublease that the Director of Island Operations determines in consultation with the City
18 Attorney are in the best interests of the Authority, that do not materially increase the
19 obligations or liabilities of the Authority, that do not materially reduce the rights of the
20 Authority, and are necessary or advisable to complete the preparation and approval of the
21 Sublease, such determination to be conclusively evidenced by the execution and delivery by
22 the Director of Island Operations of the documents and any amendments thereto.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

Owen Stephens, Secretary



ITEM 9J – EXHIBIT A

SUBLEASE No. 54

between

TREASURE ISLAND DEVELOPMENT AUTHORITY

as Sublandlord

and

**JAMES PAYNE,
an individual**

doing business as Downtown Auto Sales-Storage

as Subtenant

For the Sublease of

Building 41

**Treasure Island Naval Station
San Francisco, California**

June 12, 2008

TREASURE ISLAND SUBLEASE

Table of Contents

<u>Section</u>	<u>Page</u>
1. BASIC SUBLEASE INFORMATION.....	2
2. PREMISES	5
3. COMPLIANCE WITH MASTER LEASE	7
4. TERM.....	8
5. RENT	9
6. TAXES, ASSESSMENTS AND OTHER EXPENSES.....	10
7. USE; COVENANTS TO PROTECT PREMISES.....	11
8. ALTERATIONS	12
9. REPAIRS AND MAINTENANCE.....	14
10. LIENS	15
11. COMPLIANCE WITH LAWS.....	15
12. ENCUMBRANCES	16
13. DAMAGE OR DESTRUCTION	17
14. ASSIGNMENT AND SUBLETTING.....	17
15. DEFAULT; REMEDIES.....	18
16. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION	19
17. INSURANCE.....	22
18. ACCESS BY SUBLANDLORD	24
19. SURRENDER.....	25
20. HAZARDOUS MATERIALS.....	26
21. GENERAL PROVISIONS.....	28
22. SPECIAL PROVISIONS	32

LIST OF EXHIBITS:

EXHIBIT A – Master Lease
EXHIBIT B – Diagram of Premises
EXHIBIT C – Cover Page of Seismic Report
EXHIBIT D – Rules and Regulations
EXHIBIT E – Utilities
EXHIBIT F – TIHDI Work Force Hiring Plan

TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated for reference purposes only as of June 12, 2008, is by and between the TREASURE ISLAND DEVELOPMENT AUTHORITY, a California public benefit corporation ("Sublandlord"), and JAMES PAYNE, an individual doing business as Downtown Auto Sales-Storage ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated November 18, 2004, as amended from time to time (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord certain real property located on Treasure Island Naval Station (the "Property"), as more particularly described in the Master Lease.

B. Subtenant desires to sublet from Sublandlord, and Sublandlord is willing to sublet to Subtenant, portions of the Property on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. BASIC SUBLEASE INFORMATION

The following is a summary of basic sublease information (the "Basic Sublease Information"). Each item below shall be deemed to incorporate all of the terms of this Sublease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Sublease, the more specific provision shall control.

Sublease Reference Date: June 12, 2008

Sublandlord: TREASURE ISLAND DEVELOPMENT
AUTHORITY, a California public benefit
corporation

Subtenant: JAMES PAYNE, an individual doing business
as Downtown Auto Sales-Storage

Subleased Premises (Section 2.1):

Parcel A: approximately 4,275 square feet of space at Building 41; and Parcel B: approximately 9,000 square feet of paved land located at the west side of Building 41, Treasure Island, San Francisco, CA., as more particularly shown on Exhibit B, attached hereto including the improvements thereon.

Facility:

Building 41

Term: (Section 4.1):

Commencement date: June 12, 2008

Expiration date: November 30, 2008

Notwithstanding anything in this Sublease to the contrary, either Sublandlord or Subtenant, in its sole discretion, may terminate this Sublease for any reason upon delivery of not less than thirty (30) days' prior written notice to the other party.

Base Rent (Section 5.1):

Early Entry:

Commencing June 12, 2008 and ending June 30, 2008, the Subtenant shall be provided nineteen (19) days of Early Entry for the sole purpose of installing equipment and cleaning the facility. During the Early Entry period, Subtenant shall not pay Base Rent but shall be subject to all other terms and conditions set forth in the Sublease.

Commencing July 1, 2008, Monthly Base Rent shall be: Parcel A: One Thousand Sixty Eight Dollars and Seventy Five Cents (\$1,068.75) per month (\$.25 per square foot); and Parcel B: Nine Hundred Dollars (\$900.00) per month (\$.10 per square foot)
Total: \$1,968.75 per month

Rent Adjustment Date(s) (Section 5.2):

Not Applicable

Rent Increase Percentage (Section 5.2):

Not Applicable

Use (Section 7.1):

General office and classroom use only and for no other purpose.

Repair Amount (Section 13.1):	Ten Thousand Dollars (\$10,000)
Security Deposit (Section 19.3):	Three Thousand Nine Hundred Thirty Seven Dollars and Fifty Cents (\$3,937.50)
Notice Address of Sublandlord (Section 21.1):	Treasure Island Development Authority Treasure Island Project Office 410 Avenue of Palms Building 1, 2nd Floor Treasure Island San Francisco, CA 94130 Attn: Mirian Saez Director of Island Operations Fax No.: 415-274-0299
	with a copy to:
	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Attn: Eileen M. Malley Fax No.: (415) 554-4755
Notice Address of Subtenant (Section 21.1):	James Payne 308 Greenwich Street San Francisco, CA. 94133 Phone No. (415) 310-8842 Fax No. NA
Notice Address of Master Landlord (Section 21.1):	Department of The Navy Base Realignment and Closure Program Management Office West 1455 Frazee Road, Suite 900 San Diego, CA 92108-4310 Fax #: (619) 532-9858

2. PREMISES

2.1. Subleased Premises. Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises. Subtenant shall have the non-exclusive right to use, together with other subtenants in the Facility, the lobbies, corridors, elevators, stairways and other public areas of the Facility and the Property (collectively, the "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Facility and the Property.

In the event Subtenant uses or occupies space outside the Premises without the prior written consent of Sublandlord (the "Encroachment Area"), then upon written notice from Sublandlord ("Notice to Vacate"), Subtenant shall immediately vacate such Encroachment Area and pay as additional rent for each day Subtenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (a) highest rental rate then approved by Sublandlord's Board of Directors for the Premises or the Facility, or (b) then current fair market rent for such Encroachment Area, as reasonably determined by Sublandlord (the "Encroachment Area Charge"). If Subtenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Sublandlord of the Encroachment Area Charge be deemed a consent by Sublandlord to the use or occupancy of the Encroachment Area by Subtenant or a waiver (or be deemed as waiver) by Sublandlord of any and all other rights and remedies of Sublandlord under this Sublease (including Subtenant's obligation to indemnify, defend and hold Sublandlord harmless as set forth in the last paragraph of this Section 2.1), at law or in equity.

In addition to the foregoing amount, Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Sublandlord determines during subsequent inspection(s) that Subtenant has failed to vacate the Encroachment Area, then Subtenant shall pay to Sublandlord, as additional rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Sublandlord to Subtenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Sublandlord will incur by reason of Sublandlord's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Subtenant's failure to comply with the applicable Notice to Vacate and Sublandlord's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Sublandlord under this Sublease, at law or in equity. The amounts set forth in this Section 2.1 shall be due within three (3) business days following the applicable Notice to

Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area.

In addition to the rights and remedies of Sublandlord as set forth in the immediately foregoing two paragraphs of this Section 2.1, the terms and conditions of the indemnity and exculpation provision set forth in Section 16 below shall also apply to Subtenant's use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Subtenant shall additionally indemnify, defend and hold Sublandlord harmless from and against any and all loss or liability resulting from delay by Subtenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any claims against Sublandlord made by any tenant or prospective tenant founded on or resulting from such delay and losses to Sublandlord due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 2.1 and the reasonableness of the amount of the charges described in this Section 2.1.

Initials: _____ Sublandlord _____ Subtenant

2.2. As Is Condition of Premises.

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them ("Subtenant's Agents"), of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 2.2(c) below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises governing the use, occupancy, management, operation and possession of the Premises

("Laws"). Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below), (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use by Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 2.2(b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions*," prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that any structures or improvements located on or about the Premises, may fail structurally and collapse.

3. COMPLIANCE WITH MASTER LEASE

3.1. Incorporation by Reference. All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein.

3.2. Performance of Master Landlord's Obligations. Sublandlord does not assume the obligations of Master Landlord under the Master Lease. With respect to work, services, repairs, restoration, the provision of utilities or HVAC services, or the performance of any other obligations required of Master Landlord under the Master Lease, Sublandlord's sole obligation with respect thereto shall be to request the same, on request in writing by Subtenant, and to use reasonable efforts to obtain the same from Master Landlord. Subtenant shall cooperate with

Sublandlord as may be required to obtain from Master Landlord any such work, services, repairs, repainting, restoration, the provision of utilities or HVAC services, or the performance of any of Master Landlord's obligations under the Master Lease.

3.3. Conflict. If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

3.4. Compliance with Master Lease. Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

4. TERM

4.1. Term of Sublease. The term of this Sublease (the "Term") shall commence on the Commencement Date set forth in the Basic Sublease Information, and expire on the Expiration Date set forth in the Basic Sublease Information, unless sooner terminated pursuant to the terms of this Sublease.

4.2. Effective Date. This Sublease shall become effective on the date (the "Effective Date") upon the later of (i) the Parties' execution and delivery of this Sublease, (ii) Sublandlord's Board of Director's approval of this Sublease at a duly noticed meeting, if such approval is required, or (iii) the Commencement Date.

4.3. Automatic Termination. If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

4.4. Termination by Sublandlord. Subtenant's period of occupancy of the Premises is subject to Sublandlord's right to terminate this Sublease as provided herein at such time as Sublandlord determines, in its sole discretion, that the Premises are needed in connection with a Sublandlord program or project. As used herein, "Sublandlord program or project" shall mean any development or renovation, by public and/or private parties, of the building or land in or on which the Premises are located. In the event of any such development or renovation, Sublandlord shall have the right to terminate this Sublease without liability or expense upon delivery to Subtenant of thirty (30) days prior written notice of such termination. Subtenant agrees and shall be required to surrender possession of the Premises by the end of such thirty (30) day period.

4.5. No Relocation Assistance; Waiver of Claims. Subtenant acknowledges that it will not be a displaced person as that term is defined under the California Government Code Section 7260 et seq. ("California Relocation Act") and the Uniform Relocation Assistance and Real Property Policies Act, 42 U.S.C. 4601 et seq. ("URA"), and that Subtenant will not be entitled to any relocation benefits provided under the California Relocation Act and the URA, including any moving expenses, reimbursement for costs associated with increased rent, loss of goodwill or other costs related to the termination of Subtenant's Lease and Subtenant's relocation from the Premises. Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, agents, contractors and successors and assigns and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260, et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. 4601, et seq.).

Initials: _____ Subtenant

5. RENT

5.1. Base Rent. Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Base Rent in the amount set forth in the Basic Sublease Information. Base Rent shall be paid to Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 21.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

5.2. Adjustments in Base Rent. If this Sublease has not been terminated, then on each Rent Adjustment Date set forth in the Basic Sublease Information, the Base Rent shall be increased by

the Rent Increase Percentage set forth in the Basic Lease Information.

5.3. Additional Charges. In addition to Base Rent, Subtenant shall pay all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder, all utility charges, and any amounts other than Base Rent that shall become due and payable by Subtenant under this Sublease (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

5.4. Late Charge. If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

5.5. Default Interest. If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes

and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

6.2. **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES

7.1. **Subtenant's Permitted Use.** Subtenant may use the Premises for the Permitted Use set forth in the Basic Sublease Information, but for no other purpose without the prior written consent of Sublandlord, which consent may be given or withheld in Sublandlord's sole and absolute discretion.

7.2. **Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant shall have access to the Premises on a 24-hours per day, seven days a week basis; provided, however, Subtenant shall coordinate such access with the local representative of Master Landlord.

7.3. **Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time.

7.4. **Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"); provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or

property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

7.5. No Interference with Navy Operations. Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over Subtenant's use of the Premises in the event of any conflict; provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

7.6. No Unlawful Uses, Nuisances or Waste. Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas on or about the Property outside of the Premises.

8. ALTERATIONS

8.1. Alterations. Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications for any Alterations approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of construction on the Premises at all times.

8.2. Historic Properties. Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to any improvements on the Premises (i) which will affect the historic characteristics of the improvements or modify the appearance of the exterior of the improvements without Master Landlord's and Sublandlord's prior written consent, or (ii) if such Alterations would preclude qualifying the improvements for inclusion on the National Register for Historic Places.

8.3. Ownership of Alterations. Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 8 shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 19 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 8.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

8.4. Subtenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment used upon or installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and shall be removed by Subtenant, subject to the provisions of Section 19 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

8.5. Sublandlord's Alterations. Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the improvements on the Premises; provided, that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the purposes stated herein.

9. REPAIRS AND MAINTENANCE

9.1. Subtenant Responsible for Maintenance and Repair. Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

9.2. Utilities. Sublandlord shall provide the basic utilities and services described in the attached Exhibit E (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole cost, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

9.3. Landscaping. Subtenant shall maintain the exterior landscaping of the Premises in good condition and repair.

9.4. Janitorial Services. Subtenant shall provide all janitorial services for the Premises.

9.5. Pest Control. Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.

9.6. Trash. Subtenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations attached hereto as Exhibit F. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

9.7. No Right to Repair and Deduct. Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any

part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

10. LIENS

10.1. Liens. Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

11. COMPLIANCE WITH LAWS

11.1. Compliance with Laws. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary; provided, however Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below), and all applicable provisions of the San Francisco Environment Code. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

11.2. Regulatory Approvals.

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of any Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation, any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") Sublandlord, City and Master Landlord, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties"), against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

11.3. Compliance with Sublandlord's Risk Management Requirements. Subtenant shall not do anything, or permit anything to be done, in or about the Premises or to any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general liability, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

12. ENCUMBRANCES

12.1. Encumbrance By Subtenant. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

13. DAMAGE OR DESTRUCTION

13.1. Damage or Destruction to the Premises. In the case of damage to or destruction of the Premises by earthquake, fire, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in Section 17 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more to repair than the Repair amount set forth in the Basic Lease Information, either party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 19 (except for damage caused by a casualty pursuant to which this Sublease may be terminated under this Section 13.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 13.1, then Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 8.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

13.2. No Abatement in Rent. In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 13.1 above, there shall be no abatement in the Rent payable hereunder.

13.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

14. ASSIGNMENT AND SUBLETTING

14.1. Restriction on Assignment and Subletting. Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge, sublease or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises (a "Transfer"), without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion. Subtenant shall provide Sublandlord with a written notice of its intention to Transfer this Sublease or the Premises, together with a copy of the proposed Transfer agreement at least thirty (30) days prior to the commencement date of the proposed Transfer. Subtenant shall provide Sublandlord with such information regarding the proposed Transfer as Sublandlord may reasonably request.

14.2. Bonus Rental. If Sublandlord consents to a Transfer of any of Subtenant's interest in or rights with respect to the Premises pursuant to Section 14.1 above, then one hundred percent (100%) of any rent or other consideration payable to Subtenant in excess of the Base Rent payable hereunder (or the proportionate share thereof applicable to the portion of the Premises that is subject to the Transfer) shall be paid to Sublandlord immediately upon receipt by Subtenant.

15. DEFAULT; REMEDIES

15.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

- (a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;
- (b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease; provided, Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord;
- (c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days;
- (d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted; and
- (e) **Notices of Default.** The delivery to Subtenant of three (3) or more notices of default within any twelve (12) month period, irrespective of whether Subtenant actually cures such default within the specified time period, may, in the sole and absolute discretion of the Authority, be deemed an incurable breach of this Sublease allowing the Authority to immediately terminate this Sublease without further notice or demand to Subtenant.

15.2. Remedies. Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

15.3. Sublandlord's Right to Cure Subtenant's Defaults. If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord where prior notice by Sublandlord is impractical), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

16. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION

16.1. Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused solely by the gross negligence or willful misconduct of the Indemnified Parties. Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not

take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant, on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way connected with the Indemnified Parties' decision to Sublease the Premises to Subtenant,

regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 16.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases as it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

16.2. Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses arising out of Subtenant's use of the Premises, including but not limited to, any Losses arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees; (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises; (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of

the Premises or any Alterations; (e) any construction or other work undertaken by Subtenant on or about the Premises; and (f) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, in, on, or about the Premises or any Alterations, except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused solely by the gross negligence or intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease.

17. INSURANCE

17.1. Required Insurance Coverage. Subtenant, at its sole cost and expense, shall maintain, or cause to be maintained, through the Term of this Sublease, the following insurance:

(a) **General Liability Insurance.** Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than One Million Dollars (\$1,000,000), explosion, collapse and underground (XCU).

(b) **Automobile Liability Insurance.** Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Subtenant's activity on the Premises or the Permitted Use.

(c) **Worker's Compensation and Employer's Liability Insurance.** If Subtenant has employees, Worker's Compensation Insurance in statutory amounts with Employer's Liability with limits not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each.

(d) **Personal Property Insurance.** Subtenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Subtenant for the replacement of

Subtenant's personal property.

(e) **Other Coverage.** Such other insurance or different coverage amounts as is required by law or as is generally required by commercial owners of property similar in size, character, age and location as the Premises, as may change from time to time, or as may be required by the City's Risk Manager.

17.2. Claims-Made Policies. If any of the insurance required in Section 17.1 above is provided under a claims-made form of policy, Subtenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Sublease, to the effect that should occurrences during the Term give rise to claims made after termination of this Sublease, such claims shall be covered by such claims-made policies.

17.3. Annual Aggregate Limits. If any of the insurance required in Section 17.1 above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

17.4. Payment of Premiums. Subtenant shall pay the premiums for maintaining all required insurance.

17.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Sublandlord and Subtenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Sublease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

17.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Subtenant hereunder shall contain a cross-liability clause, shall name as additional insureds the "THE TREASURE ISLAND DEVELOPMENT AUTHORITY, CITY AND COUNTY OF SAN FRANCISCO, THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE DEPARTMENT OF THE NAVY, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the additional insureds with respect to claims arising under this Sublease, and shall provide that such insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the

company's liability.

(b) All insurance policies required to be maintained by Subtenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Sublandlord with an AM Best rating of not less than A-VIII and authorized to do business in the State of California.

(c) All insurance policies required to be maintained by Subtenant hereunder shall provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Subtenant and Sublandlord. Such notice shall be given in accordance with the notice provisions of Section 21.1 below.

(d) Subtenant shall deliver to Sublandlord certificates of insurance and additional insured policy endorsements in a form satisfactory to Sublandlord evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. Subtenant shall, upon Sublandlord's request, promptly furnish Sublandlord with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days' prior written notice, Sublandlord may require Subtenant to increase the insurance limits set forth in Section 17.1 above if Sublandlord finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Subtenant with respect to risks comparable to those associated with the use of the Premises.

(f) Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

(g) Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

18. ACCESS BY SUBLANDLORD

18.1. Access to Premises by Sublandlord.

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord,

Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

18.2. Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

19. SURRENDER

19.1. Surrender of the Premises. Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 8.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980, et seq., of the California Civil Code or in any other manner allowed by Law.

19.2. No Holding Over. If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord

against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises. Subtenant shall have no right to hold over without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and absolute discretion. If Sublandlord holds over the Premises or any part thereof after expiration or earlier termination of this Sublease, such holding over shall be terminable upon written notice by Sublandlord, and the Base Rent shall be increased to two hundred percent (200%) of the Base Rent in effect immediately prior to such holding over, and such holdover shall otherwise be on all the other terms and conditions of this Sublease. This Section shall not be construed as Sublandlord's permission for Subtenant to hold over. Acceptance of any holdover Base Rent by Sublandlord following expiration or termination of this Sublease shall not constitute an extension or renewal of this Sublease.

19.3. Security Deposit. Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount set forth in the Basic Sublease Information as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Subtenant within forty-five (45) days of the termination of this Sublease.

20. HAZARDOUS MATERIALS

20.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Sections 9601 *et seq.*), or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos

containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Subtenant agrees that it shall comply, without limiting the foregoing, with the provisions of Article 21 of the San Francisco Health Code including, without limitation, regarding obtaining and complying with the requirements of an approved hazardous materials management plan, and with the requirements of the environmental protection provisions provided for in Section 13 of the Master Lease.

20.2. Subtenant's Environmental Indemnity. If Subtenant breaches any of its obligations contained in Section 20.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 16.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and

penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

20.3. Acknowledgment of Receipt of EBS and FOSL Reports. Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease. California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Subtenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises as described in the EBS and the FOSL. In addition, California's Proposition 65, Health and Safety Code Section 25249.6 et seq., requires notice that some of these Hazardous Materials are known by the State of California to cause cancer or reproductive harm. By execution of this Sublease, Subtenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Sections 25249.6 et seq., 25359.7 and related statutes.

21. GENERAL PROVISIONS

21.1. Notices. Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to the appropriate addresses set forth in the Basic Sublease Information. Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 21.1 and applicable Laws, shall be deemed receipt of such notice.

21.2. No Implied Waiver. No failure by Sublandlord to insist upon the strict performance of

any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment of Rent due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

21.3. Amendments. Neither this Sublease nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

21.4. Authority. If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosures set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

21.5. Joint and Several Obligations. The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

21.6. Interpretation of Sublease. The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord

holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

21.7. Successors and Assigns. Subject to the provisions of Section 14, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

21.8. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

21.9. Severability. If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

21.10. Governing Law. This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

21.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's

Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein.

21.12. Attorneys' Fees. In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Sublease, reasonable fees of attorneys in the Office of the San Francisco City Attorney (Sublandlord's General Counsel) shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Further, for purposes of this Sublease, the term "attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. The term "attorney" shall have the same meaning as the term "counsel".

21.13. Time of Essence. Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

21.14. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

21.15. Survival of Indemnities. Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

21.16. Relationship of Parties. Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be

construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

21.17. Recording. Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

21.18. Non-Liability of Indemnified Parties' Officials, Employees and Agents. No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Sublease.

21.19. No Discrimination. Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

21.20. Counterparts. This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

21.21. Master Landlord's Consent. This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord.

22. SPECIAL PROVISIONS

22.1. Signs. Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

22.2. Public Transit Information. Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

22.3. TIHDI Job Broker. Subtenant shall comply with the requirements of the TIHDI Work Force Hiring Plan attached hereto as Exhibit F.

22.4. Local Hiring. Subtenant further agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Subtenant's personnel needs and to contract with local businesses for Subtenant's purchase of supplies, materials, equipment or services.

22.5. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) **Sub-Subleases and Other Subcontracts.** Subtenant shall include in all sub-subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sub-subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all sub-subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all sub-subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) **Non-Discrimination in Benefits.** Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations or in San Francisco or with respect to its operations under this Sublease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **HRC Form.** As a condition to this Sublease, Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, (i) Subtenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation; and (ii) the HRC approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

22.6. MacBride Principles - Northern Ireland. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

22.7. Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Section 802(b) and 803(b) of the San Francisco Environment Code, Subtenant shall not provide any items to the construction of tenant improvements or Alterations in the Premises, or otherwise in the performance of this Sublease, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

22.8. Conflicts of Interest. Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

22.9. Wages and Working Conditions. Subtenant agrees that any person performing labor in

the construction of any tenant improvements and any Alterations to the Premises, which Subtenant provides under this Sublease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Subtenant shall include, in any contract for construction of such tenant improvements and Alterations, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord upon request, certified payroll reports with respect to all persons performing labor in the construction of such tenant improvement work or any Alterations to the Premises.

22.10. Prohibition of Tobacco Advertising. Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Sublandlord or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

22.11. Pesticide Prohibition. Subtenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Subtenant to submit to Sublandlord an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant may need to apply to the Premises during the terms of this Sublease, (b) describes the steps Subtenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as Subtenant's primary IPM contact person with the City. In addition, Subtenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

22.12. First Source Hiring Ordinance. The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264 98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after Sublandlord adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Subtenant shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance.

22.13. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for

Proposals, and all other records of communications between City departments and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

22.14. Conflicts of Interest. Through its execution of this Sublease, Subtenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Subtenant becomes aware of any such fact during the Term of this Sublease, Subtenant shall immediately notify Sublandlord.

22.15. Charter Provision. This Sublease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

22.16. Requiring Health Benefits for Covered Employees. Unless exempt, Subtenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Sublease as though fully set forth. The text of the HCAO is available on the web at www.dph.sf.ca.us/HCRes/Resolutions/2004Res/HCRes102004.shtml. Capitalized terms used in this Section and not defined in this Sublease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Subtenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Subtenant is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Subsection (a) above.

(c) Subtenant's failure to comply with the HCAO shall constitute a material breach of this Sublease. Sublandlord shall notify Subtenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Sublease for violating the HCAO, Subtenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Subtenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, Sublandlord shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be

exercisable individually or in combination with any other rights or remedies available to Sublandlord.

(d) Any Subcontract entered into by Subtenant shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Subtenant shall notify City's Purchasing Department when it enters into such a Subcontract and shall certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the Sublandlord may pursue the remedies set forth in this Section against Subtenant based on the Subcontractor's failure to comply, provided that Sublandlord has first provided Subtenant with notice and an opportunity to obtain a cure of the violation.

(e) Subtenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying Sublandlord with regard to Subtenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Subtenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Subtenant shall keep itself informed of the current requirements of the HCAO.

(h) Subtenant shall provide reports to Sublandlord in accordance with any reporting standards promulgated by Sublandlord under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Subtenant shall provide Sublandlord with access to records pertaining to compliance with the HCAO after receiving a written request from Sublandlord to do so and being provided at least five (5) business days to respond.

(j) Sublandlord may conduct random audits of Subtenant to ascertain its compliance with HCAO. Subtenant agrees to cooperate with Sublandlord when it conducts such audits.

(k) If Subtenant is exempt from the HCAO when this Sublease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) (or [Fifty Thousand Dollars (\$50,000) if Subtenant is a qualified nonprofit], but Subtenant later enters into an agreement or agreements that cause Subtenant's aggregate amount of all agreements with Sublandlord to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant and the Contracting Department to be equal to or

greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

22.17. Notification of Limitations on Contributions. Through its execution of this Sublease, Subtenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

22.18. Preservation-Treated Wood Containing Arsenic. As of July 1, 2003, Subtenant may not purchase preservative-treated wood products containing arsenic in the performance of this Sublease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Subtenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

22.19. Resource Efficient City Buildings and Pilot Projects. Subtenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Subtenant hereby agrees that it shall comply with all applicable provisions of such code sections.

22.20. Food Service Waste Reduction. Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully set forth. This provision is a material term of this

Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Sublandlord will suffer actual damages that will be impractical or extremely difficult to determine; further, Subtenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Sublandlord will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Sublandlord because of Subtenant's failure to comply with this provision.

22.21. Estoppel Certificates. At any time and from time to time, within ten (10) days after Sublandlord's request, Subtenant will execute, acknowledge and deliver to Sublandlord a statement certifying the following matters: (a) the Commencement Date and Expiration Date of this Sublease; (b) that this Sublease is unmodified and in full force and effect (or if there have been modifications, that this Sublease is in full force and effect as modified and the date and nature of such modifications); (c) the dates to which the Rent has been paid; (d) that there are no Events of Default under this Sublease (or if there are any Events of Default, the nature of such Event of Default); and (e) any other matters reasonably requested by Sublandlord. Sublandlord and Subtenant intend that any such statement delivered pursuant to this paragraph may be relied upon by any assignee of Sublandlord's interest in the Master Lease or this Sublease, any mortgagee or any purchaser or prospective purchaser of the building or land on which the Premises are located. Subtenant irrevocably appoints Sublandlord, as Subtenant's agent, to execute and deliver in the name of Sublandlord any such instrument if Subtenant fails to do so, which failure shall also be an Event of Default under this Sublease.

22.22. Addendum. The terms of the Addendum, if any, attached to this Sublease are incorporated into the Sublease by reference. In the event of any inconsistency between the Sublease and the Addendum, the terms of the Addendum shall control.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

SUBTENANT:

**JAMES PAYNE, an individual
doing business as Downtown Auto Sales-
Storage**

By: _____
James Payne

SUBLANDLORD:

Treasure Island Development Authority

By: _____
Mirian Saez
Director of Island Operations

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

Sublease Prepared By: Richard A. Rovetti, Leasing Manager _____
(initial)

EXHIBIT A

LAND AND STRUCTURES MASTER LEASE

EXHIBIT B

DIAGRAM OF PREMISES

EXHIBIT C

COVER PAGE OF THE SEISMIC REPORT

EXHIBIT D

RULES AND REGULATIONS

1. All rules and regulations set out in the Master Lease shall prevail.
2. No signs, advertisements, or notices shall be attached to, or placed on, the exterior or interior of the Building or elsewhere on the Property, without prior written approval of Sublandlord.
3. Subtenant's contractors and invitees, while on the Premises or Subtenant's parking area, shall be subject to these Rules and Regulations, and will be subject to direction from Sublandlord and its agents, but will not be an agent or contractor of the Sublandlord or its agents. Subtenant's contractors shall be licensed by the State, insured and bonded at the amount requested by the Sublandlord.
4. Subtenant shall install and maintain at Subtenant's expense, any life safety equipment required by governmental rules, regulations or laws to be kept on the Premises.

EXHIBIT E

STANDARD UTILITIES AND SERVICES AND RATES

Utilities Rate Schedule

Utility Service	Rate	Unit
Electric Rate	\$ 0.14	per kwh
Water Rate	\$ 5.40	per kgal
Sewer Rate	\$ 5.75	per kgal
Gas Rate	\$ 0.60	per therm

Rates are subject to adjustment.

Subtenant shall install utility Submeters to the satisfaction of Sublandlord.

Subtenant shall arrange for delivery of utility services to the premises by making a "Request for Utilities Services" by contacting:

San Francisco Public Utilities Commission
c/o Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Mr. Vic Zorzinsky
(415) 274-0333

EXHIBIT F

TIHDI WORKFORCE HIRING AGREEMENT



AGENDA ITEM 9(K)
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with the Treasure Island Homeless Development Initiative for the Period from July 1, 2008 to June 30, 2009 (Action Item)

Contact: Mirian Saez, Director of Island Operations

Phone: (415) 274-0660

BACKGROUND

The Treasure Island Homeless Development Initiative ("TIHDI") is a consortium of nonprofit organizations that provide services to homeless and other economically disadvantaged San Francisco residents. TIHDI was organized to utilize the resources of the former Naval Station Treasure Island to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

The proposed Professional Services Agreement (the "Agreement") between the Treasure Island Development Authority (the "Authority") and TIHDI continues TIHDI's role in (i) the coordination and facilitation of community-based homeless service organizations in Treasure Island community activities; (ii) participation in the development process to support development plans which implement the proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property on Treasure Island and Yerba Buena Island (the "TIHDI Agreement"); (iii) development of housing units allocated to TIHDI under the TIHDI Agreement; and (iv) operation of a job broker system and economic self-sufficiency programs for Island residents.

TIHDI and the Authority have negotiated a budget of One Hundred and Seventy Five Thousand Dollars (\$175,000) to support TIHDI's mission and to provide services to the Treasure Island community for the upcoming 2008-2009 Fiscal Year. Funds to support the Agreement will come from the revenues generated by leasing Treasure Island facilities.

BUDGET IMPACT

The Authority contributed One Hundred and Fifty Thousand Dollars to TIHDI in Fiscal Year 2007-2008 for services provided by TIHDI to the Treasure Island community. The proposed budget of One Hundred and Seventy Five Dollars (\$175,000) represents an increase of \$25,000 in the Authority's contribution to TIHDI. The partnership with Wine Valley Catering has created a higher and more consistent demand for Job Brokering Services. As a result, staffing in this activity has been increased, with a resulting \$25,000 increase in costs.

RECOMMENDATION

Project staff recommends approval of the Professional Services Agreement between the Treasure Island Development Authority and the Treasure Island Homeless Development Initiative. TIHDI continues to expand its offerings and to provide important services to the Treasure Island community. These services range from supporting economic development and individual self-sufficiency through keeping the community informed of development activity on the island. A summary of TIHDI's goals and accomplishments in FY 2007-2008 is attached as an exhibit.

EXHIBITS

A. Professional Services Agreement between the Treasure Island Development Authority and the Treasure Island Homeless Development Initiative.

B. Summary of TIHDI's goals and accomplishments in FY 2007-2008.

[TIHDI Professional Services Agreement]

Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with the Treasure Island Homeless Development Initiative for the Period from July 1, 2008 to June 30, 2009.

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority

1 as a redevelopment agency under California redevelopment law with authority over the Base
2 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the
3 Base which are subject to Tidelands Trust, vested in the Authority to administer the public
4 trust for commerce, navigation and fisheries as to such property; and

5 **WHEREAS**, The Board of Supervisors approved the designation of the Authority as a
6 redevelopment agency for Treasure Island in 1997; and,

7 **WHEREAS**, The City and County of San Francisco negotiated a proposed Base
8 Closure Homeless Assistance Agreement and Option to Lease Real Property with the
9 Treasure Island Homeless Development Initiative ("TIHDI"), a consortium of nonprofit
10 corporations organized to utilize the resources of former naval base Treasure Island available
11 to help fill gaps in the continuum of care for homeless persons and families, pursuant to the
12 Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

13 **WHEREAS**, On July 25, 1996, the Board of Supervisors passed Resolution 672-96,
14 authorizing sole source negotiations with TIHDI and its member organizations; and,

15 **WHEREAS**, The Authority wishes to support TIHDI pursuant to the Base Closure
16 Community Redevelopment and Homeless Assistance Act of 1994 by entering into a
17 Professional Services Agreement (the "Agreement") under which TIHDI will perform the
18 services described in the Agreement, including services related to the implementation of the
19 Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

20 **WHEREAS**, TIHDI represents and warrants that it is qualified to perform the services
21 required by the Authority as set forth under the Agreement; and,

22 **WHEREAS**, The Authority has negotiated with TIHDI to reach agreement on the scope
23 of work, and budget for the services shown in the Agreement; now, therefore be it
24
25

RESOLVED, That the Authority hereby authorizes the Director of Island Operations to execute the Agreement, effective July 1, 2008, with TIHDI for an amount not to exceed \$175,000, in substantially the form of the Agreement attached hereto as Exhibit A; and, be it

FURTHER RESOLVED, That the Board of Directors hereby authorizes the Director of Island Operations or her designee to enter into any additions, amendments or other modifications to the Agreement that the Director of Island Operations determines in consultation with the City Attorney are in the best interests of the Authority, that do not materially increase the obligations or liabilities of the Authority, that do not materially reduce the rights of the Authority, and are necessary or advisable to complete the preparation and approval of the Agreement, such determination to be conclusively evidenced by the execution and delivery by the Director of Island Operations or her designee of the documents and any amendments thereto.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on June 11, 2008.

Owen Stephens, Secretary



ITEM 9K – EXHIBIT A

EXHIBIT A

**Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, California 94130**

Agreement between the Treasure Island Development Authority and

TREASURE ISLAND HOMELESS DEVELOPMENT INITIATIVE

This Agreement is made this 1ST day of **July**, 2008, in the City and County of San Francisco, State of California, by and between: the Treasure Island Homeless Development Initiative, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a nonprofit public benefit corporation hereinafter referred to as the "Authority," acting by and through its Director of Island Operations, hereinafter referred to as the "Director."

Recitals

WHEREAS, the Authority wishes to utilize the resources of the former Naval Station Treasure Island to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, The Authority's Purchasing Policy and Procedures authorize non-competitive negotiations for contracts that are in furtherance of the Homeless Assistance Agreement between the Authority and Contractor including any TIHDI member organizations for contracts for economic development opportunities identified in the Reuse Plan; and,

WHEREAS, Contractor provides services on Treasure Island including (i) the coordination and facilitation of community-based homeless service organizations in Treasure Island community activities; (ii) participation in the development process to support development plans which implement the Homeless Assistance Agreement; and (iii) operation of a job broker system and economic self-sufficiency programs for Island residents; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by Authority as set forth under this Contract;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco ("City"). Charges will accrue only after prior written authorization certified by the Controller, and the amount of the Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

ITEM 9K – EXHIBIT A

This Agreement will terminate without penalty, liability or expense of any kind to the Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority budget decisions are subject to the discretion of the Mayor, the Board of Supervisors and the Authority's Board of Directors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from July 1, 2008 to June 30, 2009.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the **Tenth** day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Island Operations, in his or her sole discretion, concludes has been performed as of the **Final** day of the immediately preceding month. In no event shall the amount of this Agreement exceed **One Hundred and Seventy Five Thousand Dollars (\$175,000)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Authority as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

ITEM 9K – EXHIBIT A

a. The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority are not authorized to offer or promise, nor is the Authority required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by Authority to Contractor shall be subject to audit by the Authority.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City and/or the Authority for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City and/or the Authority for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City or the Authority if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City or the Authority a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City or the Authority; (c) conspires to defraud the City or the Authority by getting a false claim allowed or paid by the City or the Authority; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City or the Authority; or (e) is a beneficiary of an inadvertent submission of a false claim to the City or the Authority, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City or Authority within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties (Disallowance)

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

ITEM 9K – EXHIBIT A

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

Authority shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority.

ITEM 9K – EXHIBIT A

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Authority, nor be entitled to participate in any plans, arrangements, or distributions by Authority pertaining to or in connection with any retirement, health or other benefits that Authority may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

Should Authority, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

ITEM 9K – EXHIBIT A

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the US Navy, the Treasure Island Development Authority, and the City and County of San Francisco, their Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Director of Island Operations

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance

ITEM 9K – EXHIBIT A

is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to Authority certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to Authority, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Contractor shall indemnify and save harmless Authority and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any claims against the Authority.

In addition to Contractor's obligation to indemnify Authority, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that Authority may have under applicable law.

18. Liability of Authority

ITEM 9K – EXHIBIT A

AUTHORITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of **Five Hundred Dollars (\$500)** per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that Authority will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. Authority may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to deliver to Authority within the time fixed or such extensions of time permitted in writing by the Authority.

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific

ITEM 9K – EXHIBIT A

performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.
 - (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
 - (3) Terminating all existing orders and subcontracts.
 - (4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - (5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
 - (6) Completing performance of any services or work that Authority designates to be completed prior to the date of termination specified by Authority.
 - (7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.
- c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

ITEM 9K – EXHIBIT A

(1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to Authority against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and

ITEM 9K - EXHIBIT A

other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the Authority if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of Authority

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority. Contractor agrees that all information disclosed by Authority to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority: **Treasure Island Development Authority**
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Mirian Saez, Director of Island Operations
Fax: (415) 274-0299

To Contractor: **Treasure Island Homeless Development Initiative**
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Sherry Williams, Executive Director
Fax: (415) 834-9134

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

ITEM 9K – EXHIBIT A

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth

ITEM 9K – EXHIBIT A

below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Authority may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle Authority, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the

ITEM 9K – EXHIBIT A

sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Authority upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City or the Authority.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2 (a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

ITEM 9K – EXHIBIT A

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City and Authority premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any

ITEM 9K – EXHIBIT A

violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between Authority and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

ITEM 9K – EXHIBIT A

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the Authority's consideration for this Agreement. The Authority in its sole discretion shall determine whether such a breach has occurred. The Authority and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the Authority and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City and the Authority shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City and the Authority shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City or the Authority.

ITEM 9K – EXHIBIT A

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3 (e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City and Authority shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City or Authority.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City and Authority may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City or Authority has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating

ITEM 9K – EXHIBIT A

in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City and Authority in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City and Authority with access to records pertaining to compliance with HCAO after receiving a written request from Authority to do so and being provided at least ten business days to respond.

k. Contractor shall allow City and Authority to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City and Authority may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City and/or Authority when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City or Authority to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City or Authority to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract.

ITEM 9K – EXHIBIT A

Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

ITEM 9K – EXHIBIT A

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Contractor agrees:

(1) To be liable to the City and/or the Authority for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the Authority's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the Authority, City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the Authority and City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the Authority and City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City and Authority suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

ITEM 9K – EXHIBIT A

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City and/or the Authority by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the City and/or the Authority is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's and Authority's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City and the Authority may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any

ITEM 9K – EXHIBIT A

new City or Authority contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

ITEM 9K – EXHIBIT A

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Left blank by agreement of the parties (Supervision of Minors)

56. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's and Authority's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public

ITEM 9K – EXHIBIT A

Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term “graffiti” means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner’s authorized agent, and which is visible from the public right-of-way. “Graffiti” shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that Authority will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the Authority because of Contractor’s failure to comply with this provision.

60. Left blank by agreement of the parties (Slavery Era Disclosure)

ITEM 9K – EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<p>TREASURE ISLAND DEVELOPMENT AUTHORITY</p> <p>By: _____ Miriam Saez, Director of Island Operations Treasure Island</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>TREASURE ISLAND HOMELESS DEVELOPMENT INITIATIVE</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>_____ Sherry Williams, Executive Director 410 Avenue of the Palms Treasure Island San Francisco, CA. 94130</p> <p>City vendor number: 51465</p>
--	---

Appendices

- A: Services to be provided by Contractor
B: Calculation of Charges

ITEM 9K – EXHIBIT A

Appendix A Services to be provided by Contractor

1. Description of Services

Contractor agrees to perform the following services:

TASK ONE

Treasure Island Homeless Development Initiative (“Contractor”) shall provide all labor, materials, and equipment necessary to:

- Coordinate and facilitate the participation of community-based homeless service organizations activities with all public and private agencies operating on former naval base Treasure Island in *the current* implementation of the proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property.

Specifically:

- Operate the Job Broker System for island employers to fulfill hiring objectives outlined in their leases and/or contracts with the Treasure Island Development Authority.
- Facilitate dissemination of information to members of the Treasure Island Homeless Development Initiative regarding environmental issues impacting Treasure Island.
- Facilitate dissemination of information to members of the Treasure Island Homeless Development Initiative regarding hearings involving Treasure Island.
- Coordinate participation of members of the Treasure Island Homeless Development Initiative where appropriate.
- Operate the “Ship Shape” as a Community Center.
- Operate the Business Assistance Center to offer financial literacy, asset development and micro enterprise support for island residents.

Treasure Island Homeless Development Initiative (“Contractor”) shall provide all labor, materials, and equipment necessary to:

- Coordinate and facilitate the participation of community-based homeless service organizations and coordinate activities with all public and private agencies operating on former naval base Treasure Island in the development of *long term plans* to implement the proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property on Treasure Island and Yerba Buena Island.

Specifically:

Provide consultation on the affordable housing component of the proposed development plan by TICD. This includes review of financing proposals by developer, phasing of housing, and the design and placement of housing.

ITEM 9K – EXHIBIT A

Provide input in community serving and development components, Job Broker and First Source compliance and economic development opportunities as indicated in the TIHDI Agreement.

2. Reports

Contractor shall submit written reports as requested by the Treasure Island Development Authority. Format for the content of such reports shall be determined by the Treasure Island Development Authority. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the Treasure Island Development Authority will be Director of Island Operations.

ITEM 9K – EXHIBIT A

Appendix B Calculation of Charges

TIHDI 2008-2009

	Total		
Income			
Contract Income		TIDA	DCYF
Total Contract Income	215,000	175,000	40,000
Foundation Income			
Total Foundation Income	100,000		
Corporate Income			
Total Corporate Income	43,000		
Donation Income			
Total Donation Income	52,500		
Other Income			
Total Other Income	90,924		
Total Income	501,424		
Personnel			
Total Personnel & Benefits	310,259		
NonPersonnel Expenses			
Prof Fees/Contracts			
Total Prof Fees/Contracts	54,901		
Program Expenses			
Total Program Expenses	20,000		
Operating Expenses			
Total Operating Expenses	116,264		
Total Expenses	501,424		

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement as the Director of Island Operations, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed One Hundred and Seventy Five Thousand Dollars (\$175,000).

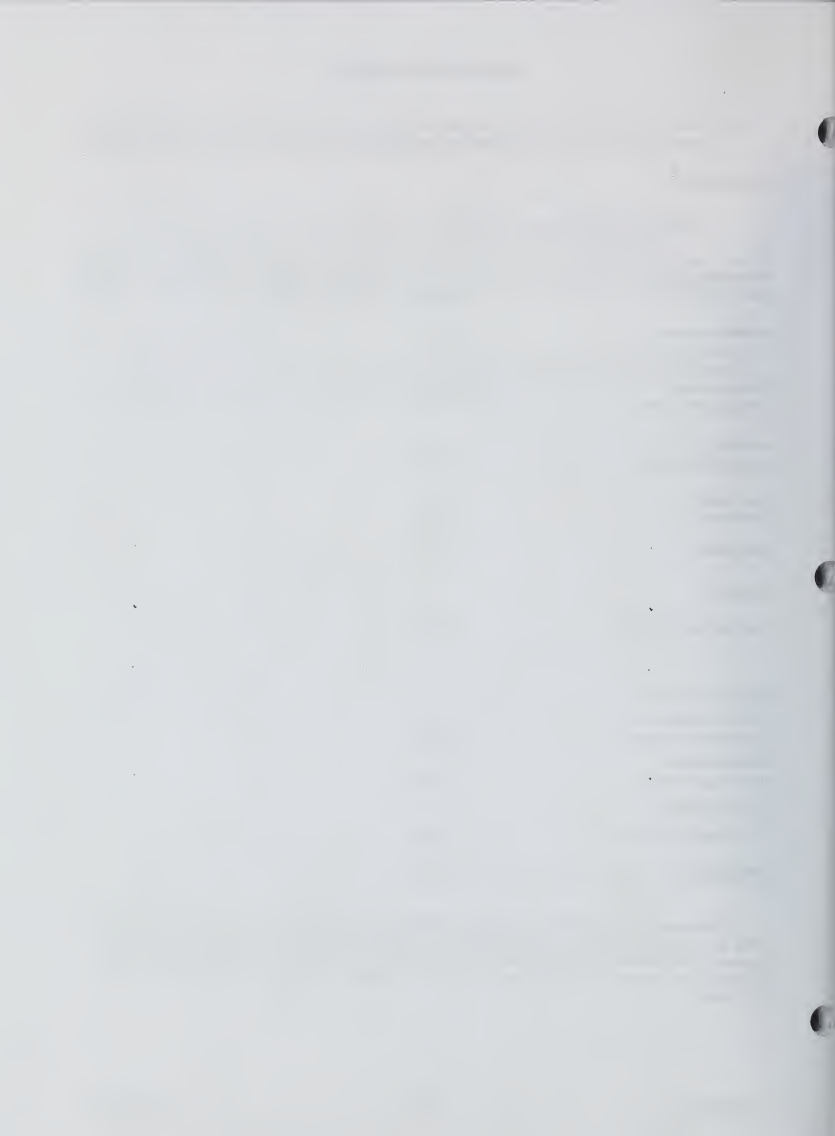


EXHIBIT B

**Report to TIDA
From the Treasure Island Homeless Development Initiative
Contract Year 2007-2008**

TIHDI received funding from TIDA to perform the following services. The accomplishments related to these services are as of June 1, 2008.

TASK ONE

Treasure Island Homeless Development Initiative ("Contractor") shall provide all labor, materials, and equipment necessary to:

- Coordinate and facilitate the participation of community-based homeless service organizations activities with all public and private agencies operating on former naval base Treasure Island in the current implementation of the proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property.

Specifically:

- Operate the Job Broker System for island employers to fulfill hiring objectives outlined in their leases and/or contracts with the Treasure Island Development Authority.

TIHDI, in conjunction with TIHDI member Toolworks, entered into a joint venture (JV) with Wine Valley Catering (WVC). This JV will serve to provide job training and employment opportunities for homeless and economically disadvantaged San Franciscans. This has been a "ramp up" period as the key venue, La Casa de la Vista was already booked by other event entities through August 2008. However, WVC has been steadily increasing bookings on off dates and has hired 7 set up and break down workers and 8 servers to date through the TIHDI Job Broker System.

The Broker has also placed 7 workers in short term warehouse positions with CA Logistics and provided set and breakdown workers for the following special events that were held on the Island: 7 workers for the Triathlon; 4 workers for the TI Music Festival, 8 workers for the Dragon Boat Festival, and 21 workers for the Bass wedding. One kitchen aide was hired for short term work for the Harvey Milk film caterer.

5 workers were placed full time landscaping positions with Rubicon Programs.

- Facilitate dissemination of information to members of the Treasure Island Homeless Development Initiative regarding environmental issues impacting Treasure Island.

Members were notified of informational meeting held by the Navy earlier in the fiscal year.

- Facilitate dissemination of information to members of the Treasure Island Homeless Development Initiative regarding hearings involving Treasure Island.

Members are notified of hearing regarding Treasure Island.

- Coordinate participation of members of the Treasure Island Homeless Development Initiative where appropriate.

TIHDI members have been encouraged to participate in emergency planning, community and housing provider meetings.

- Operate the "Ship Shape" as a Community Center.

TIHDI provides almost 100 Treasure Island households supplemental groceries at the weekly Food Pantry held at the Ship Shape. The Ship Shape also hosts AA/NA support groups, community meetings, special community events, program graduations, and workshops. TIHDI manages scheduling, oversees maintenance, and pays for all expenses such as garbage, utilities and janitorial.

TIHDI developed a Business Assistance Center in the Ship Shape which provides information to all island residents on banking, money management, credit repair, asset development and micro enterprise development. The Center is the hub for the Economic Self Sufficiency Program (ESSP) which was supported through a one time TIDA community grant. Through the ESSP, TIHDI hosted a tax aid site where 114 people had assistance with their tax returns, hosted 13 workshops on micro enterprise development and business planning; held 7 money management workshops, hosted craft and baked goods markets, and assisted people in understanding their credit report and credit repair. Over 250 island residents has been assisted by this Center.

Treasure Island Homeless Development Initiative ("Contractor") shall provide all labor, materials, and equipment necessary to:

- Coordinate and facilitate the participation of community-based homeless service organizations and coordinate activities with all public and private agencies operating on former naval base Treasure Island in the development of long term plans to implement the proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property on Treasure Island and Yerba Buena Island.

Specifically:

- Provide consultation on the affordable housing component of the proposed development plan by TICD. This includes review of financing proposals by developer, phasing of housing, and the design and placement of housing.
- Provide input in community serving and development components, Job Broker and First Source compliance and economic development opportunities as indicated in the TIHDI Agreement.

Progress: TIHDI met with MOBRD and discussed outline, process and timeline for potential disposition and development agreement (DDA) between TIHDI and City. Also met with Workforce Development Director to discuss integration of job program on Treasure Island with City system.

AGENDA ITEM (9L)
Treasure Island Development Authority
City and County of San Francisco
Meeting of June 11, 2008

Subject: Resolution Authorizing the Director of Island Operations to Execute a Professional Services Agreement with Rubicon Enterprises, Inc. to Provide Landscape Services Commencing July 1, 2008, and Expiring on June 30, 2009 (Action Item)

Contact: Mirian Saez, Director of Island Operations

Phone: (415) 274-0660

BACKGROUND

Rubicon Enterprises, Inc. ("Rubicon"), a California nonprofit public benefit corporation and a member organization of the Treasure Island Homeless Development Initiative ("TIHDI"), provides services that increase economic opportunities for economically-disadvantaged people. Rubicon Landscape Services provides stable employment and livable wages to disabled and economically disadvantaged individuals from the San Francisco Bay Area. Rubicon has been providing landscaping services to the Authority since 1998. The current landscaping services contract expires June 30, 2008. The Treasure Island operation hires strictly from the City of San Francisco. Since 1998, sixty-four (64) Rubicon Landscape employees have been hired through the TIHDI referral programs. Three TIHDI referrals have been promoted to the position of Lead Worker and three to the position of Supervisor. Other former employees have moved on to opportunities including working for SF Recreation and Parks Department, SF Conservation Corps and one has returned to school on a full-time basis.

The Authority and Rubicon have negotiated a new Professional Services Agreement (the "Agreement") for the period from July 1, 2008 through June 30, 2009, for a total not to exceed Eight Hundred and Fifty Thousand Dollars (\$850,000). Routine and adjunct services are for five days a week for an amount not to exceed Fifty Nine Thousand Four Hundred and Seventeen Dollars (\$59,417) per month or Seven Hundred and Thirteen Thousand Dollars (\$713,000) for the year. This represents a savings of Fifty Six Thousand Four Hundred and Twenty One Dollars (\$56,421) for routine services from last year's budget. These savings are being realized because large parcels of land that had been maintained by the Authority have been subleased to tenants who are developing the land as sports fields. The Agreement also provides Seventy Six Thousand Five Hundred and Fifty Six Dollars (\$76,556) for vegetation management projects and over Sixty Thousand Dollars (\$60,000) for contingencies.

The Treasure Island Development Authority Purchasing Policy and Procedures authorize non-competitive negotiations for contracts that are in furtherance of the Homeless Assistance Agreement between the Authority and TIHDI. Therefore, the Agreement for landscape services with Rubicon is being awarded on a non-competitive negotiated basis.

BUDGET IMPACT

The landscape budget for FY 2007-2008 was \$800,000. While this budget provided sufficient funds for maintenance purposes, it was not adequate to address significant issues such as tree maintenance and response to storm damage. Project Staff has worked closely with Rubicon to establish the increased total budget of \$850,000 with the flexibility to maintain the appearance of the Island and to address unanticipated issues like storm damage.

RECOMMENDATION

Project Staff recommends approval of the contract for landscape services with Rubicon from July 1, 2008 through June 30, 2009 for an amount not to exceed \$850,000.

EXHIBITS

A Professional Services Agreement between the Treasure Island Development Authority and Rubicon, Inc.

Prepared by Marc McDonald, Facilities Manager
For Mirian Saez, Director of Island Operations

[Rubicon Contract]

**RESOLUTION AUTHORIZING THE DIRECTOR OF ISLAND OPERATIONS TO EXECUTE
A PROFESSIONAL SERVICES AGREEMENT WITH RUBICON ENTERPRISES, INC. TO
PROVIDE LANDSCAPE SERVICES COMMENCING JULY 1, 2008 AND EXPIRING JUNE
30, 2009.**

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, The Base was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997 (the "Act"), which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968, the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and,

1 WHEREAS, On February 6, 1998, the Board of Supervisors adopted Resolution No.
2 43-98 approving the designation of the Authority as a redevelopment agency for Treasure
3 Island and Yerba Buena Island; and,

4 WHEREAS, The Authority has negotiated and endorsed a proposed Base Closure
5 Homeless Assistance Agreement and Option to Lease Real Property (the "Homeless
6 Assistance Agreement") with the Treasure Island Homeless Development Initiative ("TIHDI"),
7 a consortium of nonprofit corporations organized to utilize the resources of the Base to help fill
8 gaps in the continuum of care for homeless persons and families, pursuant to the Base
9 Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

10 WHEREAS, The Authority wishes to support TIHDI pursuant to the Base Closure
11 Community Redevelopment and Homeless Assistance Act of 1994; and,

12 WHEREAS, The Authority's purchasing policy and procedures authorize non-
13 competitive negotiations for contracts in furtherance of the Homeless Assistance Agreement;
14 and,

15 WHEREAS, The Authority has negotiated with Rubicon Enterprises, Inc. to reach
16 agreement on the terms of a new Professional Services Agreement (the "Agreement") in an
17 amount not to exceed Eight Hundred and Fifty Thousand Dollars (\$850,000) which (i)
18 describes the scope of work for the services shown in Appendix B of the Agreement attached
19 to this resolution as Exhibit A, and (ii) establishes the term of the Agreement for a period of 12
20 months commencing July 1, 2008 and expiring on June 30, 2009; and,

21 WHEREAS, Rubicon Enterprises, Inc., is a California nonprofit corporation and a
22 member organization of TIHDI, and Rubicon Enterprises, Inc. has represented and warranted
23 that it is qualified to perform the landscape services required by the Authority as set forth
24 under the proposed Agreement; now, therefore be it
25

EXHIBIT A

Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130

Agreement between the Treasure Island Development Authority

RUBICON ENTERPRISES, INC.

This Agreement is made this 1ST day of July, 2008, in the City and County of San Francisco, State of California, by and between: RUBICON ENTERPRISES, INC., A California nonprofit public benefit corporation, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a California nonprofit public benefit corporation, hereinafter referred to as "Authority," acting by and through its Director of Island Operations for the Treasure Island Development Authority, or the Director's designated agent.

Recitals

WHEREAS, the Authority wishes to utilize the resources of the former Naval Station Treasure Island to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, the Authority wishes to procure landscaping and other grounds maintenance services for the Authority at Naval Station Treasure Island; and,

WHEREAS, Landscaping and other grounds maintenance services are identified in the Homeless Component of the Treasure Island Reuse Plan as one of the economic development opportunities available to assist homeless and other economically disadvantaged San Franciscans; and,

WHEREAS, The Authority's Purchasing Policy and Procedures authorize non-competitive negotiations for contracts that are in furtherance of the Homeless Assistance Agreement between the Authority and the Treasure Island Homeless Development Initiative ("TIHDI") including any TIHDI member organizations for contracts for economic development opportunities identified in the Reuse Plan; and,

WHEREAS, Contractor, a member organization of TIHDI, provides landscaping and other grounds maintenance services that increase economic opportunities for economically-disadvantaged people and people with disabilities; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by Authority as set forth under this Contract;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco ("City"). Charges will accrue only after prior written authorization certified by the Controller, and the amount of the Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to the Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority budget decisions are subject to the discretion of the Mayor, the Board of Supervisors and the Authority's Board of Directors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from **July 1, 2008 to June 30, 2009.**

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Director, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Eight Hundred and Fifty Thousand Dollars (\$850,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Director as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

a. The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the Authority are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the Authority are not authorized to offer or promise, nor is the Authority required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by Authority to Contractor shall be subject to audit by the Authority.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City and/or the Authority for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City and/or the Authority for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City or the Authority if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City or the Authority a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City or the Authority; (c) conspires to defraud the City or the Authority by getting a false claim allowed or paid by the City; or the Authority; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City or the Authority; or (e) is a beneficiary of an inadvertent submission of a false claim to the City or the Authority, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City or Authority within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties (Disallowance)

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

Authority shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with Authority, nor be entitled to participate in any plans, arrangements, or distributions by Authority pertaining to or in connection with any retirement, health or other benefits that Authority may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. Authority does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

Should Authority, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). Authority shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the Treasure Island Development Authority, the City and County of San Francisco, the United States Navy, and their respective Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island
San Francisco, CA. 94130
Attn: Director of Island Operations

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to Authority certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to Authority, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification

Contractor shall indemnify and save harmless Authority and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Authority's costs of investigating any claims against the Authority.

In addition to Contractor's obligation to indemnify Authority, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that Authority may have under applicable law.

18. Liability of Authority

AUTHORITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, Authority will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of Two Thousand Dollars (\$2,000) per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that Authority will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. Authority may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by Authority because of Contractor's failure to deliver to Authority within the time fixed or such extensions of time permitted in writing by Authority.

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from Authority to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that Authority designates to be completed prior to the date of termination specified by Authority.

(7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.

(4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to Authority against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the Authority if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of Authority

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority. Contractor agrees that all information disclosed by Authority to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority:

Treasure Island Development Authority
410 Avenue of the Palms
Treasure Island, San Francisco, Ca. 94130
Attn: Director of Island Operations
415.274.0299 - FAX

To Contractor:

Rubicon Enterprises, Inc.
154 South 23rd Street
Richmond, CA. 94804
Attn: Rick Aubry, President
510.412.1751 - FAX
FEIN: 68-0353815

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle Authority, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to Authority upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City or the Authority.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2 (a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City and Authority premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between Authority and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the Authority to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a

combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the Authority's consideration for this Agreement. The Authority in its sole discretion shall determine whether such a breach has occurred. The Authority and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the Authority and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City and the Authority shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City and the Authority shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City or the Authority.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3 (e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. Authority shall notify Contractor if such a breach has occurred. If, within 30 days after receiving Authority's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City and Authority shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City or Authority.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has

notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City and Authority may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City or Authority has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City and Authority in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City and Authority with access to records pertaining to compliance with HCAO after receiving a written request from Authority to do so and being provided at least ten business days to respond.

k. Contractor shall allow City and Authority to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City and Authority may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City and/or Authority when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City or Authority to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City or Authority to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in

this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be non duplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Contractor agrees:

(1) To be liable to the City and/or the Authority for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the Authority's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the Authority, City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the Authority and City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and

other damages that the Authority and City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City and Authority suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City and/or the Authority by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the City and/or the Authority is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's and Authority's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot

measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City and the Authority may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City or Authority contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

55. Left blank by agreement of the parties (Supervision of Minors)

56. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the Authority may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's and Authority's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that Authority will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by the Authority because of Contractor's failure to comply with this provision.

60. Left blank by agreement of the parties (Slavery Era Disclosure)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

	<p>TREASURE ISLAND DEVELOPMENT AUTHORITY</p> <p>By: _____</p> <p>Mirian Saez, Director of Island Operations</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By _____</p> <p>Deputy City Attorney</p>
<p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By _____</p> <p>Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>RUBICON ENTERPRISES, INC., a California nonprofit corporation</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>_____ Rick Aubry, President Rubicon Enterprises, Inc. 154 South 23rd Street Richmond, CA. 94804 (510) 412-1771 FEIN: 68-0353815 Vendor No. 46249</p>

Appendices

A: Services to be provided by Contractor

B: Parcel Listing with 2008-2009 Prices for Landscape Maintenance Services at Treasure Island and Yerba Buena Island

Appendix A
Services to be provided by Contractor

1. Description of Services

The Description of Services includes the following:

- I. Scope of Services
- II. Landscape and Maintenance Specifications for Treasure Island and Yerba Buena Island
- III. Map Identifying maintenance parcels for Treasure Island
- IV. Map identifying maintenance parcels for Yerba Buena Island

I. Scope of Services

Rubicon Enterprises, Inc. shall provide all insurance, materials, labor and equipment necessary to perform routine landscape maintenance services for the Treasure Island Development Authority at designated parcels on Treasure Island and Yerba Buena Island.

All landscape maintenance services shall be performed according to the specifications described in "Landscape and Maintenance Specifications for Treasure Island and Yerba Buena Island Fiscal Year 2008-2009." These specifications describe the scope of work for three distinct levels of routine service. Parcels will be maintained at the level of service designated for each parcel in accord with the graphic depictions shown in "Map Identifying maintenance parcels for Treasure Island", and "Map identifying maintenance parcels for Yerba Buena Island."

A general breakdown of Rubicon pricing for fiscal year 2008-2009

Activity	Annual Cost	Comments
Monthly parcel maintenance per parcel listing	\$713,000	Monthly payments of \$59,417
YBI Tree Pruning	\$20,830	Subject to Approval
Treasure Island Tree Management Proposal	\$55,726	Subject to Approval
Dumpster for Abandoned Property	\$9,000	Monthly payments of \$750
Contingency	\$51,444	Subject to Approval
Contract Maximum (Fiscal Year 2008/2009)	\$850,000	

Appendix A
Services to be provided by Contractor

II. Landscape and Maintenance Specifications for Treasure Island and Yerba Buena Island



**Landscape Maintenance Specifications for
Treasure Island and Yerba Buena Island
Fiscal Year 2008-2009**

SERVICE LEVEL 1

Turf Grass Mowing and Associated Cleanup: All turf areas shall be maintained in a manner that promotes proper turf health and a neat and attractive appearance. Turf grass areas shall be mowed once per week throughout the growing season, and then twice per month from November 15 through March 1st. Turf grass height shall be maintained between 2 inches and 3.5 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair and or replace all items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed once per week. Tree wells shall be maintained around all trees and large shrubs growing in turf areas. A weed control program shall be implemented to achieve turf areas relatively free of broadleaf weeds and other targeted weeds. Rubicon shall recycle and reuse waste plant material to the greatest extent possible. .

Turf Fertilization, Weed Control, Fungicide and Insecticides: Fertilization shall be applied up to four times per year as required to promote the proper health and appearance of turf, trees, shrubs, groundcover and color areas. A complete fertilizer with an analysis of 16-6-8 shall be applied at a rate of 275 pounds per acre per application. Chem-Lawn or other commercial liquid fertilizer applications are not acceptable. Herbicides, fungicides, insecticides, and lime shall be applied as necessary to maintain superior plant health and appearance.

Irrigation: Irrigation shall be performed in a manner that promotes proper plant health and growth. Irrigation shall include watering of lawns, shrubs, trees, planting beds, ground cover, and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses used for watering, and on all connections made to fire hydrants.

At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining and repairing any underground piping located more than one foot from any sprinkler head.

Annual & Perennial Color Plants: Annual color shall be planted in specified areas as directed by the Mayor's Treasure Island Office Contracting Officer (hereinafter called

**Landscape Maintenance Specifications for
Treasure Island and Yerba Buena Island
Fiscal Year 2008-2009**

the "Facilities Manager"). Planting shall occur three times per year by October 15th, April 1st, and July 15th. Plant beds shall be maintained at all times to insure good plant health and appearance. Planting beds shall be dressed with fine, uniform organic compost. It is estimated that no more than 1,000 flats of annuals (333 flats per planting session) and some perennials will be required. Once planting areas have been designated, Rubicon shall present to the Facilities Manager a schedule that includes the number and types of plants to be used for each planting session and the design patterns that will be achieved.

Trees and Shrub Maintenance: Trees and shrubs shall be pruned as required to encourage proper health, to maintain a pleasing appearance and to prevent interference with pedestrian and vehicular traffic. *Note: All tree pruning shall be limited to heights under 12 feet.* Pruning shall be performed to:

- Prevent growth in front of windows, over entranceways and walkways, and in locations where visibility at street intersections would be obstructed.
- Remove dead, diseased or damaged growth.
- Evenly form or balance trees and shrubs to maintain their established shape and appearance. Informal hedges or screen plantings shall not be converted to formal shapes
- Remove tree branches up to eight (8") inches in diameter and within ten (10') feet of the ground if such branches extend over pathways or roads, and within fourteen (14') feet if such branches extend over the bus route.
- Extensive pruning and "cut back" activities shall be accomplished in the winter to give trees and shrubs sufficient time to recover before the growing season.
- Ivy and ground cover shall be kept to a minimum of eight inches (8") from shrubs and trees.
- Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material
- A 3-inch layer of mulch will be installed over bare soil in shrub areas to discourage weeds and improve soil.

Any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be performed as directed at an additional cost

Hard Surface Area Weed Control: Weeds shall be removed from all asphalt and other hard surface areas. Herbicides shall be applied to prevent re-growth.

**Landscape Maintenance Specifications for
Treasure Island and Yerba Buena Island
Fiscal Year 2008-2009**

Policing: All maintenance areas shall be policed at least once per week to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

Debris Removal and Storm Damage Cleanup: All maintenance areas shall be cleaned 2 times per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

Playgrounds, Sandboxes, Ball Fields, and Tennis Courts: Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

<u>Level 1 Task</u>	<u>Frequency / Year</u>
Policing	52
Mowing	43
Edging/Trimming	43
Fertilization	as needed
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	3 times plus spot spraying as needed
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	54

These frequencies are average projected amounts of service that we feel will be required to provide the standard of maintenance described above. Depending on overall weather patterns and associated plant responses we may perform some tasks more times than shown and others less times than shown.

**Landscape Maintenance Specifications for
Treasure Island and Yerba Buena Island
Fiscal Year 2008-2009**

SERVICE LEVEL 2

Turf Grass Mowing and Associated Cleanup: All turf areas shall be maintained in a manner that promotes proper turf health and a neat and attractive appearance. Turf areas shall be mowed an average of two times per month. Turf grass height shall be maintained between 2 inches and 4 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers, and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair or replace any items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, and other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed once per month. Tree wells shall be maintained around all trees and large shrubs growing in lawn and turf areas. All clippings shall be cleared from walkways, roadways, and other paved areas. Rubicon shall recycle and reuse waste plant material to the greatest extent possible.

Turf Fertilization, Weed Control, Fungicide and Insecticides: None.

Irrigation: Minimum irrigation shall be performed in a manner that promotes good appearance of landscaped areas. Irrigation shall include the watering of lawns, shrubs, trees, ground cover and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses that are used for watering and all connections made to fire hydrants.

At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall be responsible for maintaining and repairing irrigation controllers and any underground piping located more than one foot from any sprinkler head.

Trees and Shrubs: All trees and shrubs shall be pruned to provide safe passage, maintain a healthy and pleasing appearance, and prevent interference with pedestrian and vehicular traffic. Any extensive pruning or "cut back" shall be accomplished in the winter or during the dormant season. Any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be performed as directed at an additional cost. Ivy and ground cover shall be kept a minimum of eight inches (8") from shrubs and trees. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

**Landscape Maintenance Specifications for
Treasure Island and Yerba Buena Island
Fiscal Year 2008-2009**

Weed Control In Paved Areas: Weeds shall be removed from all asphalt and other hard surface areas. Herbicides shall be applied to prevent re-growth.

Policing, Debris Removal, and Storm Damage Cleanup: All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

Playgrounds, Sandboxes, Ball Fields, and Tennis Courts: Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

<u>Level 2 Task</u>	<u>Frequency / Year</u>
Policing	24
Mowing	24
Edging/Trimming	24
Fertilization	0
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	0
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	36

These frequencies are average projected amounts of service that Rubicon feels will be required to provide the standard of maintenance described above. Depending on overall weather patterns and associated plant responses Rubicon may perform some tasks more times than shown and others less times than shown.

**Landscape Maintenance Specifications for
Treasure Island and Yerba Buena Island
Fiscal Year 2008-2009**

SERVICE LEVEL 3

Turf Grass Mowing and Associated Cleanup: Grass and weeds shall be cut 16 times per year. Prior to mowing, all trash and debris, including leaves, paper and other objects within the maintenance area shall be removed. Grass/weeds shall be maintained at a uniform height of not less than 2" and not more than 5".

Turf Fertilization, Weed Control, Fungicide and Insecticides: None.

Irrigation: None.

Trees and Shrubs: All trees and shrubs shall be pruned as required to encourage proper health and to maintain a pleasing appearance. Any extensive pruning or "cut back" shall be accomplished in the winter or during the dormant season. Ivy and ground cover shall be kept a minimum of eight inches (8") from shrubs and trees. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

Weed Control In Paved Areas: Weeds shall be removed from all asphalt and other paved areas four times per year. Herbicides shall be applied to prevent re-growth.

Policing, Debris Removal, and Storm Damage Cleanup: All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

Playgrounds, Sandboxes, Ball Fields, and Tennis Courts: Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a month to remove foreign objects.

Irrigation: Level 3 areas shall not include any irrigation

<u>Level 2 Task</u>	<u>Frequency / Year</u>
Policing	24
Mowing	16
Edging/Trimming	24
Fertilization	0
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	0
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	0

Appendix A
Services to be provided by Contractor

III. Map Identifying maintenance parcels for Treasure Island



[illegible]

22ACADITHA THAP-90
18 OCTOBER 1986
FAC(SM) S.T. ACILTO

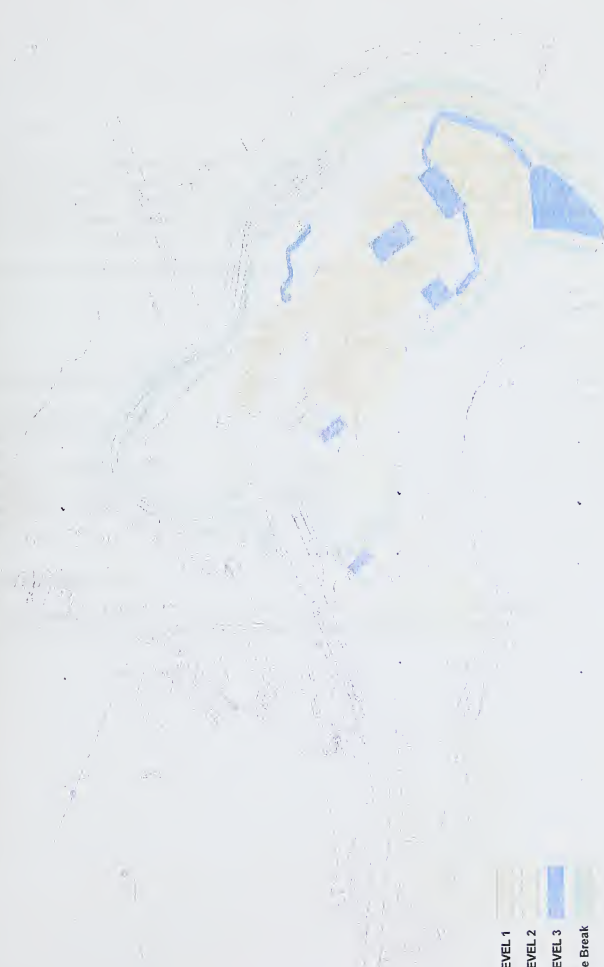


Appendix A
Services to be provided by Contractor

IV. Map identifying maintenance parcels for Yerba Buena Island



YERBA BUENA SERVICE LEVELS



LEVEL 1

LEVEL 2

LEVEL 3

Fire Break



Appendix A
Services to be provided by Contractor

2. Reports

Contractor shall submit written reports as requested by the **Treasure Island Development Authority**. Format for the content of such reports shall be determined by the **Treasure Island Development Authority**. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

FINAL REPORT FORMAT TO BE PROVIDED BY FRISHTAH AFIFI

Date			
Activity	Annual Cost	Charges to Date	Amount Remaining
Monthly parcel maintenance per parcel listing	\$713,000		
YBI Tree Pruning	\$20,830		
Treasure Island Tree Management Proposal	\$55,726		
Dumpster for Abandoned Property	\$9,000		
Contingency	\$51,444		
Contract Maximum (Fiscal Year 2008/2009)	\$850,000		

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the **Treasure Island Development Authority** will be **Director of Island Operations**.

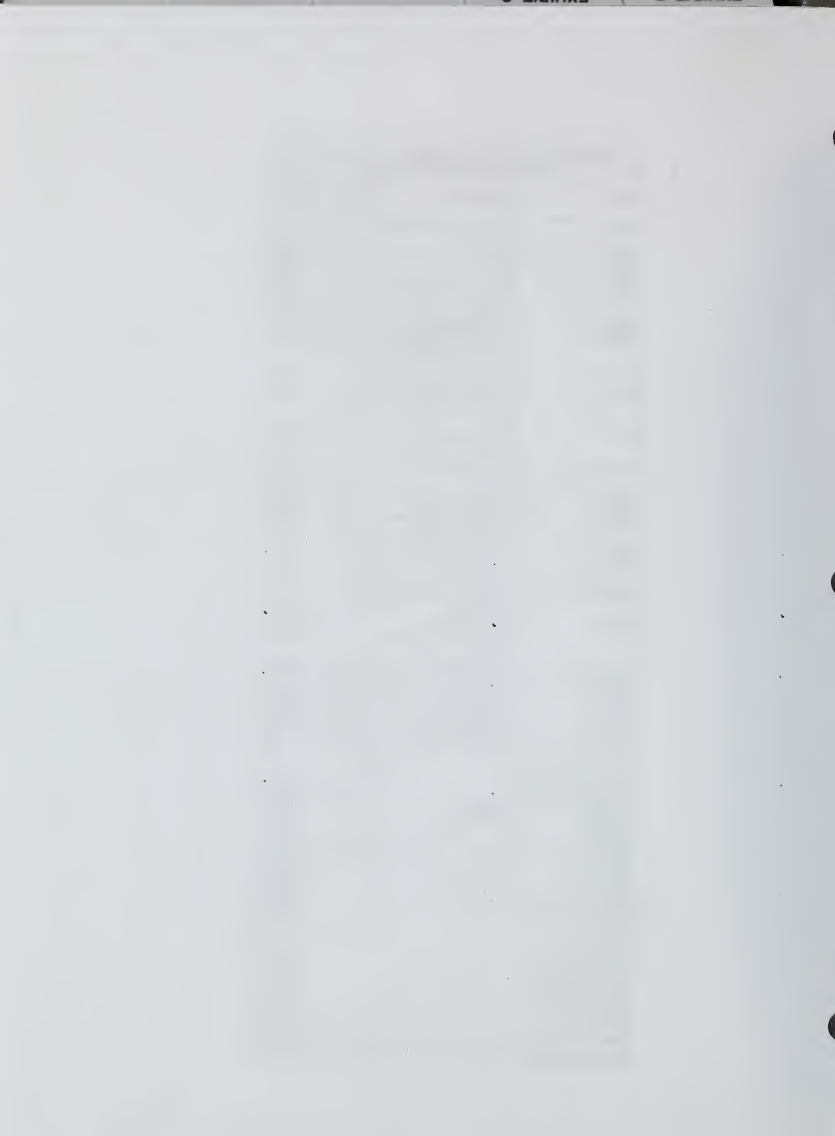


Appendix B

Parcel Listing with 2008-2009 Prices for Landscape Maintenance Services at Treasure Island and Yerba Buena Island



Parcel Listing with 2008-2009 Prices and Scope Adjustments			
Annual Amounts - Prepared May 27, 2009			
PARCEL	DESCRIPTION	SERVICE LEVEL	2008-2009 Pricing effective 7/2008
parcel 1	bldg 1, tourist stop, causeway	1	\$40,731
parcel 1A	bldg 180	1	\$8,238
parcel 2	bldg 2	1	\$22,031
parcel 3	bldg 3	1	\$10,483
parcel 4	pier 1	3	\$1,653
parcel 5	Calif. bet M&I (Corrected square footage)	2	\$3,216
parcel 6	Picnic area tennis courts	3	\$8,208
parcel 6A	Area outside baseball field	3	\$3,199
parcel 6B	bldg 233 lift station surrounds (removed fenced off area due to fire)	3	\$2,986
parcel 7	bldg 92 & surrounds (removed fenced off area due to fire)	3	\$10,141
parcel 8	bldg 99, 29, & surrounds (removed fenced off area due to fire)	3	\$12,137
parcel 10	legal bldg & surrounds (Removed new sports field portion)	2	\$11,835
parcel 12	post office (updated actual scope)	3	\$0
parcel 13	dog park site/playing fields	1	\$16,072
parcel 14	star barracks	2	\$30,524
parcel 15	great lawn casa chapel library	1	\$162,023
parcel 16	Nimitz conference center (Updated actual scope of work)	2	\$20,386
parcel 18	navy exchange	3	\$3,621
parcel 18A	CCM yard (This price is for perimeter only)	3	\$4,071
parcel 18B	bldg 257	3	\$5,321
parcel 19/19A	Fields (Updated to reflect actual measurements)	3	\$0
parcel 20	elementary school	1	\$20,886
parcel 21	Fire School (Based on actual measurements, excluding Little League)	1	\$10,302
parcel 21A	YMCA and Ship Shape	1	\$21,935
parcel 22	Navy Storage	3	\$2,432
parcel 23	PUC (Updated actual scope)	3	\$2,586
parcel 24	brig (Updated actual scope)	1	\$6,686
parcel 25	gas station	3	\$2,573
parcel 27	area near Austin Hall	3	\$0
parcel 27A	Austin Hall & surrounds	3	\$0
parcel 28	Inventory Housing	2	\$0
parcel 29	DPW	3	\$3,931
YERBA BUENA ISLAND			
Captains Park		1	\$10,109
quarters 1	Nimitz House	2	\$7,908
quarters 2-7	great whites	2	\$19,293
quarters 61		1	\$4,192
quarters 62		2	\$8,772
quarters 240		2	\$9,703
Fire Breaks			\$51,401
Sea Wall, outer			\$14,134
Sea Wall, inner			\$8,536
Trash Cans at Tourist Stop			\$17,260
Trash cans island wide			\$14,364
Poison Oak			\$1,709
Annual planting and maintenance			\$26,256
Disease and Insect			\$2,140
Storm damage cleanup			\$34,231
Navy Housing - TJ			\$8,113
Reservoir Maintenance			\$21,351
Pump Station Maintenance			\$5,605
Extra Dumpster			(separate)
Rounding			(\$94)
Total Annual Pricing			\$713,000
Total Monthly Pricing			\$59,417





)

)

)





TREASURE ISLAND DEVELOPMENT AUTHORITY

410 AVENUE OF THE PALMS,
BLDG. ONE, 2ND FLOOR, TREASURE ISLAND
SAN FRANCISCO, CA 94130
(415) 274-0660 FAX (415) 274-0299
WWW.SFGOV.ORG/TREASUREISLAND

**DRAFT Minutes of Special Meeting
Treasure Island Development Authority
June 11, 2008**

San Francisco City Hall
Room 400
San Francisco, CA

1. Call to Order: 1:08 PM

Roll Call Present: Jared Blumenfeld
Fred Blackwell
John Rahaim
Owen Stephens

Excused: John Elberling
Supervisor Chris Daly

DOCUMENTS DEPT.

JUL - 3 2008

SAN FRANCISCO
PUBLIC LIBRARY

2. Possible Closed Session for Conference with Real Property Negotiations

There was no Public Comment on the Possible Closed Session.

Director Blumenfeld motioned to move to Closed Session.
Director Blackwell seconded the motion.

The TIDA Board moved to Closed Session at 1:10 PM.

Closed Session Attendees:

Jack Sylvan, Michael Tymoff – Office of Joint Development.
Peter Summerville, Miriam Saez – Treasure Island Development Authority.
Mariam Morley – Deputy City Attorney.

The TIDA Board returned to Open Session at 1:38 PM.

Director Blumenfeld motioned not to disclose the Closed Session discussion.
Director Rahaim seconded the motion not to disclose.

Director Claudine Cheng joined the TIDA Board at 1:40 PM.

4. Report by the Office of Joint Development (Called Out of Order)

Mr. Jack Sylvan, Treasure Island Redevelopment Project Manager, discussed planned amendments to the proposed Treasure Island congestion pricing legislation pending in the State Legislature, also discussed anticipated state legislation to address certain California Redevelopment Law requirements.

3. Report by Director of Island Operations

Ms. Mirian Saez, Director of Island Operations, provided an update on staff accomplishments and activities and events being held on the Island. Reported that a new Director of the Housing Authority has been identified, and she anticipates being back in her role as Director of Island Operations full time by late July of this year. Stated that the Exotic-Erotic Ball will be moving from the Cow Palace back to San Francisco, to be held at Building Three on Treasure Island in late October.

5. Communications

There was no discussion of the Communications.

6. Report by the Treasure Island/Yerba Buena Island Citizen Advisory Board

Mrs. Karen Knowles-Pearce, CAB Chair, discussed the CAB's June meeting. The CAB was given a presentation on pending legislation and the concept of a Project Area Committee for redevelopment.

7. Ongoing Business by Directors

Director Cheng requested that Director Rahaim assume the seat on the Ad-Hoc Nomination Committee which was vacated by former Director Franklin's departure from the TIDA Board.

8. General Public Comment

Mr. Marc Conners, Good Neighbors of TI/YBI, spoke in support of Good Neighbors and provided an update on their past month's activities.

Mr. Ken Maley spoke in support of the software project he is working on with the City's Department of Emergency Management.

Mr. Bill Chamberlin spoke in support of the Pacifica II Project proposed for Treasure Island.

9. Consent Agenda

There was no Public Comment on the Consent Agenda.

Director Stephens motioned for approval.

Director Blumenfeld seconded the motion.

The Consent Agenda was approved unanimously.

10. Informational Presentation on Treasure Island Readdressing

Ms. JoAnne Hicks, Department of Emergency Communication, discussed the planned readdressing of certain buildings and housing units on Treasure Island. The needs for

readdressing stems from several different databases existing for buildings on Treasure Island. Readdressing will clear these conflicts and remedy any existing confusion amongst public safety entities and dispatchers when responding to Treasure Island. The whole Island is not affected, just certain buildings. TIDA is working with affected residents and commercial tenants in order to prepare them for the change over and its effects on mail delivery and other such services. New street and building signs have been ordered and will be installed through DPW once the database of new addresses is uploaded to the ECD system. The process is expected to be completed within the next five months.

There was no public comment on this item.

11. Discussion of Future Agenda Items by Directors

Director Cheng requested a future presentation by the Public Comment speaker working with the Department of Emergency Management on software.

The meeting was adjourned at 2:20 PM.





